163-618

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

No. 200.

JOSEPH M. BROWN, APPELLANT,

vs.

GRACE T. WYGANT, EXECUTRIX OF STEPHEN T. WYGANT, DECEASED, AND HENRY LEEDS, ASSIGNEE IN BANKRUPTCY OF STEPHEN T. WYGANT, DECEASED.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED JANUARY 20, 1893.

(15,246.)

If the record showed what the exception sets out was said in argument, and if it were improper, yet there having been no request to the court to interpose at the time, and no exception in case of refusal, no assignment of error is maintainable. *Crumpton v. United States*, 138 U. S., 361, 362.

XVI

The sixteenth assignment is as follows:

> It was error for the court to overrule the motion for a new trial and to sentence the said defendants. Rec., p. 126.

This assignment is based upon the following exception:

> Said motion for a new trial coming on to be heard, the court doth overrule the same, to which action ruling of said motion the defendant then and there excepted. Rec., p. 126.

Failure to grant a new trial is not assignable error. *Logan v. Dallas Land & Cattle Co.*, 82 *Illinois*, 130; U. S., 1876; *Hallet Organ Co. v. Weeks*, 31 Fed. 142; *Missouri, K. & T. Ry. Co. v. Cowan*, 50 *Kan.* 436, 137 U. S., 609; *Ellis v. Ball, Adm'r, &c.*, 20 *How.*, 233; *Ellis v. Jones*, 16 *How.*, 288; *Hickory v. Hickory*, 31 *Ga.*, 58; *Ewe Sook v. Spiller & Co.*, 11 *Wash. Ter.*, 142 U. S., 128; *Hallock v. United States*, 150 U. S., 50; *Hicks v. United States*, 153 U. S., 308.

A. M. Dickinson,
Assistant Attorney-General.

163 U.S. 618

163-618.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 209.

JOSEPH M. BROWN, APPELLANT,

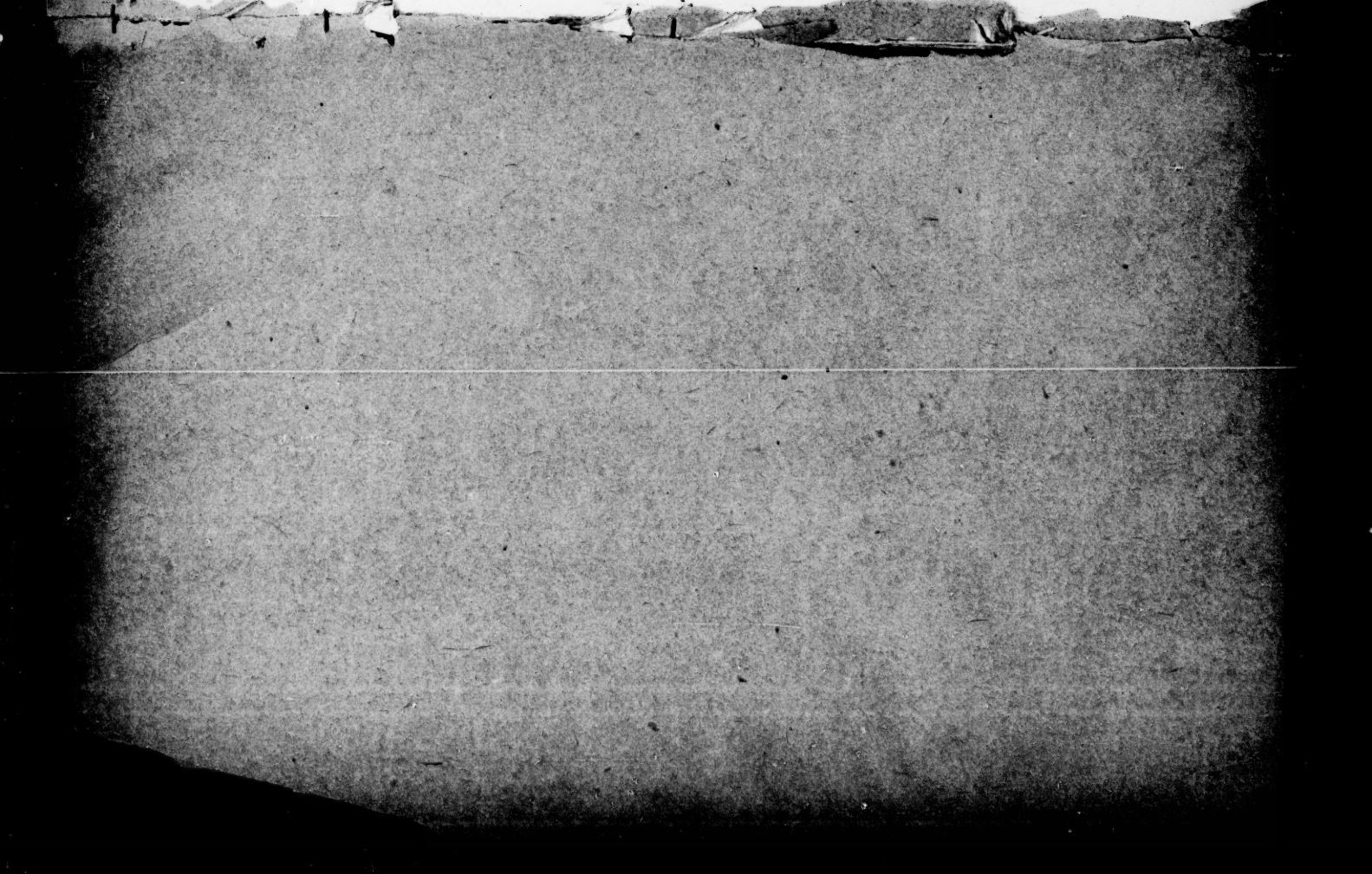
vs.

GRACE T. WYGANT, EXECUTRIX OF STEPHEN T. WYGANT, DECEASED, AND HENRY LEEDS, ASSIGNEE IN BANKRUPTCY OF STEPHEN T. WYGANT, DECEASED.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED JANUARY 20, 1893.

(15,246.)



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APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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a In the Supreme Court of the District of Columbia.

JOSEPH M. BROWN *vs.* GRACE T. WYGANT, Executrix of Stephen T. Wygant, Deceased, and Henry Leeds, Assignee in Bankruptcy of Stephen T. Wygant, Deceased.	In Equity. No. 10666.

UNITED STATES OF AMERICA, *District of Columbia*, } *ss*:

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Bill of Complaint.*

Filed June 22, 1887.

In the Supreme Court of the District of Columbia.

JOSEPH M. BROWN *vs.* GRACE WYGANT, Executrix of Stephen T. Wygant, Deceased.	In Equity. No. 10666, Docket 27.

To the supreme court of the District of Columbia:

The plaintiff complains as follows:

1st. He is a citizen of the United States residing in the *the* District of Columbia.

2d. The defendant is a resident of the State of New Jersey.

3d. The plaintiff sues in his own right and the defendant is sued in the capacity hereinafter mentioned and described.

4th. On the 9th day of February, A. D. 1874, one Thomas L. Raymond obtained a judgment against plaintiff on the law side of this honorable court for the sum of $5,000.00, and on the 14th day of May, A. D. 1874, assigned and transferred said judgment, as appears upon the records of said court, to Stephen T. Wygant, the alleged testator of the said Grace Wygant.

5th. That on the 23rd day of February, A. D. 1878, the said Stephen T. Wygant, by the judgment and decree of the district court of the United States in and for the southern district of the State of New York, was adjudged a bankrupt, and thereupon duly surrendered all of his property and rights of property, including the said judgment for $5,000.00, as required by law; that on the 20th day of March, A. D. 1878, one Henry T. Godet was duly appointed by said district court the assignee of the said estate of the

said Stephen T. Wygant, and duly qualified and entered
2 upon his duties as such assignee; that said judgment for $5,000.00 was duly mentioned and set forth on the schedule of assets made and filed in said bankruptcy proceedings by the said Stephen T. Wygant; that all and entire the interest of the said Stephen T. Wygant in said judgment for $5,000.00 passed by operation of law and the surrender aforesaid to and vested in the said Henry T. Godet as such assignee.

That a large number of claims were duly filed in said bankruptcy proceedings by the creditors of the said Stephen T. Wygant and duly proved and allowed as just claims against the estate of said bankrupt; that such claims so allowed amounted to more than $12,000.00.

That said judgment at law for $5,000.00 was the principal asset belonging to the said bankrupt, and that all of the assets so surrendered as aforesaid were of a value much less than the claims so allowed as aforesaid.

That the estate of said bankrupt has never been settled, and said judgment at law for $5,000.00 still belongs to the said Henry T. Godet as such assignee.

That said judgment at law was rendered in cause numbered on the dockets of the circuit court of the said supreme court of the District of Columbia 11757, and plaintiff prays leave to refer to the records thereof as often as the same may be necessary.

Plaintiff refers to the duly authenticated transcript of the record in said brankruptcy proceedings filed in said cause No. 11757, at law, for greater certainty as to the averments in this paragraph contained, and prays leave to refer to the same as often as may be necessary.

6th. Plaintiff further charges that the said defendant was fully aware of the proceedings aforesaid against said testator, and that all and entire the interest of said testator in said judgment for $5,000.00 had vested in said assignee in bankruptcy, and that as such executrix who had no title to nor legal claim to said judgment nor
3 any part thereof, yet plaintiff is informed and believes and charges that the said defendant, for the purpose of harrassing the plaintiff and to put him to trouble and expense, to the end that plaintiff might be induced to pay said judgment or a part thereof, and relying upon plaintiff's ignorance of the proceedings in bankruptcy aforesaid, on the 12th day of January, A. D. 1886, applied to the justice holding a special term of said supreme court of the District of Columbia for probate business for letters testamentary on the estate of the said Stephen T. Wygant, and for the purpose of inducing said justice to issue such letters filed her petition in writing, setting forth therein, amongst other things, that the said judgment at law for $5,000.00 was an asset belonging to the estate of the said Stephen T. Wygant.

Plaintiff likewise charges upon information, knowledge, and belief that the said defendant, in order to secure such letters testamentary upon a merely nominal bond, stated in such petition that said judgment was of little or no value, to wit, of the value of

$100.00 or less; that thereupon and thereafter, to wit, on the same day upon which said petition was filed as aforesaid, letters testamentary were issued to said defendant upon her giving bond, with sureties, in the sum of $200.00, and plaintiff prays leave to refer to the records in said special term as often as the same may be necessary.

Plaintiff further charges that after the said defendant received the letters testamentary aforesaid, on, to wit, the 1st day of February, A. D. 1886, — caused the clerk of the circuit court of the said supreme court of the District of Columbia to enter upon the dockets of said circuit court a suggestion of the death of the said Stephen T. Wygant, and on the same day to issue a *scire facias* on said judgment to the marshal of the District of Columbia, and the same having been returned, endorsed "*nihil*," the said defendant on *on* the 4th day of said month of February caused said clerk to issue an alias writ of *scire facias* to said marshal, and on the same day
4 caused the said marshal to return the said alias writ, likewise endorsed "*nihil*;" that thereupon and thereafter said defendant applied to the justice holding said circuit court for a "fiat" and obtained the same from said justice on, to wit, the 3rd day of March thereafter.

7th. Plaintiff upon information, knowledge, and belief further charges that at the times said defendant applied for such letters testamentary and received the same there were no assets belonging to the estate of the said Stephen T. Wygant in the said District of Columbia.

8th. That plaintiff was not served with any process in respect to the proceedings to revive said judgment for $5,000.00 aforesaid, and had no knowledge thereof until a long time thereafter; that as soon as plaintiff received notice of the proceedings aforesaid touching the revival of said judgment aforesaid he used due and reasonable diligence to cause said proceedings to be set aside and said "fiat" to be vacated, and for that purpose filed his motion in writing on the law side of this honorable court, but that the justice holding said court overruled said motion, the same having been filed on the 6th day of April, A. D. 1887, alleging as his reason therefor that the said circuit court had no power in the premises because several terms of said circuit court had intervened between the revival of said judgment and the making of said motion, but said justice in overruling said motion reserved all the rights of plaintiff to proceed in equity.

9th. Plaintiff further charges that said defendant, after the rendition of the "fiat" above mentioned, and to still further harrass and annoy plaintiff and to put him to trouble and expense, and to coerce him into paying said judgment notwithstanding the premises, instituted her action on said judgment in the supreme court of the county of New York, in the city of New York, to wit, on the 28th day of December, A. D. 1885.

5 10th. Plaintiff, by reason of the premises, is wholly without any remedy at law, and therefore he prays as follows:

Prayers.

1. That process may issue against the said defendant requiring her to appear and answer the exigencies of this bill.

2. That the said defendant during the pendancy of this suit, her agents and attorneys, may be enjoined from all proceedings to enforce the collection of said judgment at law for $5,000.00 and from all efforts to annoy or harrass plaintiff in respect thereto.

3. That on the final hearing of this cause said defendant, her agents and attorneys, may be perpetually enjoined as in the said 2d prayer it is asked that she and they may be enjoined during the pendancy of this suit; that the letters testamentary of the said defendant may be declared to be void and of no effect; that the said "fiat" rendered in said action at law may be decreed to be irregular and of no effect.

4. That the plaintiff may have such other and further relief in the premises as the nature of the case may require.

JOSEPH M. BROWN.

The defendant to this bill of complaint is Grace Wygant, executrix of Stephen T. Wygant, deceased.

DISTRICT OF COLUMBIA, *County of Washington,* } *ss:*

I, Joseph M. Brown, do solemnly swear that I have read the foregoing bill of complaint by me subscribed and know the contents thereof, and that the facts therein stated on my personal knowledge are true, and those stated on information and belief I believe to be true.

JOSEPH M. BROWN.

Sworn to before me and signed in my presence this 22d day of June, A. D. 1887.

WM. M. SMITH,
[SEAL.] *Notary Public, District of Columbia.*

6 *Rule on Defendant.*

Filed July 20, 1887.

In the Supreme Court of the District of Columbia.

JOSEPH M. BROWN
vs.
GRACE WYGANT, Executrix of Stephen T. Wygant, Deceased.
} In Equity. No. 10666, Docket 27.

On this twentieth day of July, A. D. 1887, this cause came on to be heard on the application of the plaintiff for an injunction during the pendancy of this suit, *is* prayed in the bill of complaint.

Thereupon, on consideration thereof, it is ordered that the said

defendant show cause on or before Friday, the 29 of July, instant, why such application should not be granted, provided, nevertheless, that a copy hereof be served on said defendant within five days from and after this date. July 20th, 1887.

WM. M. MERRICK, *A. J.*

Entries in Order Book 10, pages 265 and 286.

BROWN *vs.* WYGANT. } Equity. No. 10666, Doc. 27.

Please enter my special appearance for the defendant in this cause to oppose the application for an injunction.

C. H. ARMES.

Appearance, as ordered, entered.
'87, 10, 11.

BY THE CLERK.

7

BROWN *vs.* WYGANT. } Eq. 10666.

The clerk will please enter my appearance as solicitor for the defendant herein and give me a copy of the bill of complaint.

C. H. ARMES.

Appearance as ordered.
'87, 11, 26.

BY THE CLERK.

Demurrer.

Filed December 10, 1887.

In the Supreme Court of the District of Columbia.

JOSEPH M. BROWN *vs.* GRACE WYGANT, Executrix of Stephen T. Wygant, Deceased. } In Equity. No. 10666, Doc. 27.

This defendant, by protestation, not confessing all or any of the matters and things in the plaintiff's bill of complaint contained to be true in such manner and form as the same are therein set forth, doth demur to said bill, and for cause of demurrer showeth that the plaintiff hath not in and by his said bill made or stated such a case as entitles him in a court of equity to any relief against this defendant.

C. H. ARMES,
Solicitor for Defendant.

I hereby certify that, in my opinion, the above demurrer is well founded in point of law.

C. H. ARMES,
Solicitor for Defendant.

8 Grace Wygant, being duly sworn, says that the above demurrer is not interposed for delay.

GRACE WYGANT.

Sworn to before me this 8th day of Dec., 1888.
[SEAL.] GEO. F. VAIL,
Notary Public, N. Y. Co.

Decree Sustaining Demurrer.

Filed December 28, 1887.

In the Supreme Court of the District of Columbia.

JOSEPH M. BROWN
vs. } In Equity. No. 10666.
GRACE WYGANT, Executrix, &c.

This cause coming on to be heard on the original bill of complaint and the demurrer thereto, it is, this 23rd day of December, 1887, ordered, adjudged, and decreed that, for the purposes of the present object of the bill, the demurrer be and is sustained, and that the bill be amended making the assignee of the alleged bankrupt a party thereto, and that the cause be entered to the next term of this court for the purpose of making necessary parties and of amending otherwise as the complainant may be advised, and that the complainant pay the costs of the cause up to this time.

WM. M. MERRICK, *A. J.*

Motion to Extend Time to Amend Bill.

Filed January 3, 1888.

In the Supreme Court of the District of Columbia.

JOSEPH M. BROWN
vs. } In Equity. No. 10666.
GRACE WYGANT, Executrix, &c.

The complainant now comes and moves the court to ex-
9 tend the time within which the bill of complaint in this cause may be amended as allowed by a former decree of the court for the reasons following, namely:

First. Certain paper-writings deemed by said complainant essential to be consulted in order that said bill of complaint may be properly and sufficiently amended are in the possession of an attorney-at-law in the city of New York, as complainant has been personally informed and believes by the officers of the district court of the United States in and for the southern district of New York, which paper-writings complainant has been unable to obtain hitherto for want of time.

ROBERT CHRISTY,
Solicitor for Complainant.

Order Extending Time to Amend Bill.

Filed January 3, 1888.

In the Supreme Court of the District of Columbia.

JOSEPH M. BROWN
vs.
GRACE WYGANT, Executrix, &c. } In Equity. No. 10666.

This cause came on to be further heard on the motion filed by complainant for an order extending the time within which the bill of complaint may be amended, &c.

Whereupon, upon consideration thereof, it is ordered, this 3d day of January, A. D. 1888, that the — for the amending of said bill be extended until the 18th day of January, A. D. 1888.

WM. M. MERRICK, *A. J.*

10 *Amendments to Original Bill and Exhibits.*

Filed January 10, 1888.

In the Supreme Court of the District of Columbia.

JOSEPH M. BROWN
vs.
GRACE T. WYGANT, Executrix of Stephen T. Wygant, Deceased. } Equity. No. 10666.

Amendments to original bill of complaint.

The complainant, Joseph M. Brown, now comes and, by leave of the court first had and obtained, makes the amendments following to the original bill of complaint filed in this cause, viz:

First Amendment.

Add the following words to the caption of said bill: "And after the name and description of the original defendant, Henry T. Godet, assignee in bankruptcy of Stephen T. Wygant, deceased."

Second Amendment.

Insert in lieu of the 2d paragraph of said bill the following words:

"The defendant Grace Wygant is a resident of the State of New Jersey and the defendant Henry T. Godet a resident of the city of New York, in the State of New York."

Third Amendment.

Insert in lieu of the 3d paragraph of said bill the following words:

"The plaintiff sues in his own right and the defendants are sued in the capacities respectively hereinafter mentioned more particularly and described."

Fourth Amendment.

Add the following words and figures at the close of paragraph 5th of said bill:

11 "On the third day of March, A. D. 1878, Henry Wilder Allen, as register in bankruptcy, by due authority of law, made and executed under his hand and seal and delivered to Henry T. Godet, in this paragraph above mentioned and one of the defendants to this cause, an assignment in writing, whereby he conveyed and assigned to the said Henry T. Godet, as assignee of said Stephen T. Wygant, bankrupt, all the estate, real and personal, of the said Stephen T. Wygant, including all the property of whatever kind of which the said Stephen T. Wygant was possessed or in which he was interested or which he was entitled to have on the 16th day of February, A. D. 1878, with all his deeds, books, and papers relating thereto, except such property as was exempt by law; that at the time of the making and delivering of said deed of assignment the said Henry Wilder Allen was a regularly appointed and qualified register in bankruptcy in the said southern district of New York.

Plaintiff charges upon information, knowledge, and belief that the said Henry T. Godet after receiving the deed of assignment aforesaid delivered the same to his attorneys, Messrs. Ely and Smith, of the said city of New York; that the said Ely has since deceased, and that the said Smith, still continuing to act as such attorney for the said assignee, retains said deed of assignment in his possession, and that the said Smith is now likewise one of the legal advisers of the said defendant, Grace Wygant, executrix in this cause.

Plaintiff also says that he has obtained from said Smith a true and correct copy of said deed of assignment and files the same in connection with this paragraph and as a part thereof, and pray- that said copy, marked 'Exhibit A,' may be read and considered herewith."

12 EXHIBIT A.

In the Supreme Court of the District of Columbia, for the Southern District of New York.

In the Matter of STEPHEN T. WYGANT, Bankrupt. In Bankruptcy.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Know all men by these presents that Henry T. Godet, Esquire, of the city of New York, in the county of New York and State of New York, in said district, has been duly appointed assignee in said matter. Now, therefore, I, Henry Wilder Allen, register in bankruptcy of said district, by virtue of the authority vested in me by

the 14th section of an act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2d, 1867, do hereby convey and assign to the said Henry T. Godet, Esquire, assignee as aforesaid, all the estate, real and personal, of the said Stephen T. Wygant, bankrupt aforesaid, including all the property of whatever kind of which he was possessed or in which he was interested or which he was entitled to have on the 16th day of February, A. D. 1878, with all his deeds, books, and papers relating thereto, except such property as is exempted from the operation of this assignment by the provisions of said 14th section of said act:

To have and to hold all the foregoing premises to the said Henry T. Godet, Esquire, and his heirs forever, in trust, nevertheless, for the use and purposes, with the powers, and subject to the conditions and limitations set forth in said act.

13 In witness whereof I, the said register, have hereunto set my hand and caused the seal of said court to be affixed this 23d day of March, A. D. 1878.

[SEAL.] (Signed) HENRY WILDER ALLEN,
Register in Bankruptcy.

Fifth Amendment.

Add the following words at the close of the 6th paragraph of said bill:

"And plaintiff charges that at the times the said defendant, Grace Wygant, executrix as aforesaid, so caused the death of the said Stephen T. Wygant to be suggested, and said writs of *scire facias* to be issued and returned and said fiat to be allowed, he, the *the* said plaintiff, resided in the city of Washington, in the said District of Columbia, with his family."

Sixth Amendment.

Whenever the word "defendant" occurs in the said original bill and the words "Grace Wygant, executrix as aforesaid."

Seventh Amendment.

Add the following words and figures between the prayers marked 3 and 4:

"3½. That process may issue against the defendant Henry T. Godet, assignee in bankruptcy of Stephen T. Wygant, deceased, requiring him to appear and answer the exigency of the bill of complaint and the amendments thereto, and in the event the said Henry T. Godet, assignee as aforesaid, cannot be served with such process and the marshal shall so return, then that publication may be made as provided by law for non-resident defendants."

ROBERT CHRISTY,
Sol. for Plaintiff.

14 *Subpœna to Answer.*

Issued January 10, 1888.

In the Supreme Court of the District of Columbia, January 10th, 1888.

JOSEPH M. BROWN, Complainant, *vs.* GRACE WYGANT *et al.*, Defendant-. } No. 10666, Equity Docket 27.

The President of the United States to Henry T. Godet, defendant:

You are hereby commanded to appear in this court at its first special term, occurring ten days after service of this subpœna, and answer the exigency of the original and amended bill, under pain of attachment and such other process of contempt as the court shall award.

Witness E. F. Bingham, chief justice.

[SEAL.] R. J. MEIGS, *Clerk*,
By L. P. WILLIAMS, *Ass't Clerk.*

MEMORANDUM.—That the defendant herewith served is to enter — appearance in this suit in the clerk's office on or before the day at which this writ is returnable; otherwise the bill may be taken for confessed.

Marshal's Return.

Returned February 7, 1888.

Not to be found.
Feb'y 7th, 1888.

A. A. WILSON, *Marshal.*

15 *Demurrer to Amended Bill.*

Filed January 30, 1888.

In the Supreme Court of the District of Columbia.

JOSEPH M. BROWN *vs.* GRACE WYGANT, Executrix of Stephen T. Wygant, Deceased, and Henry T. Godet, Assignee of Stephen T. Wygant, Deceased. } In Equity. No. 10666.

The demurrer of Grace Wygant, executrix of Stephen T. Wygant, deceased, one of the defendants, to the amended bill.

This defendant, by protestation, not confessing all or any of the matters and things in the plaintiff's amended bill of complaint contained to be true in such manner and form as the same are therein

set forth, doth demur to said amended bill and for cause of said demurrer showeth that the plaintiff hath not in and by his said amended bill made or stated such a case as entitles him in a court of equity to any relief against this defendant.

C. H. ARMES,
Sol. for this Defendant.

I hereby certify that in my opinion the above demurrer is well founded in point of law.

C. H. ARMES,
Solicitor for this Defendant.

CITY, COUNTY, AND STATE OF NEW YORK, *ss:*

Grace Wygant, being duly sworn, says the above demurrer is not interposed for delay.

GRACE WYGANT.

[SEAL.] JOHN H. W. KILLEEN,
Notary Public, No. 50, City and County of N. Y.

16 *Entry in Order Book* 10, *Page* 317.

BROWN *vs.* WYGANT. } 10666.

1888, Feb'y 1.—Clerk will set down this case for hearing at Feb'y term.

ROBERT CHRISTY,
Solicitor for Compl't.

Calendared as ordered.
'88, 2, 1.

BY THE CLERK.

Order for Hearing of Demurrer in the General Term.

Filed February 21, 1888.

In the Supreme Court of the District of Columbia.

JOSEPH M. BROWN *vs.* GRACE WYGANT, Executrix, &c., *et al.* } In Equity. No. 10666.

It is ordered on this twenty-first day of February, A. D. 1888, that the demurrer filed in this cause by the said Grace Wygant, executrix, &c., defendant, be heard in the general term in the first instance.

E. F. BINGHAM,
Chief Justice.

17 *Decree in General Term.*

Filed July 4, 1888.

In the Supreme Court of the District of Columbia, in General Term.

JOSEPH M. BROWN,
vs.
GRACE WYGANT, Executrix, &c. } In Equity. No. 10666.

This cause came on to be heard on the demurrer of the defendant, Grace Wygant, executrix, &c., to the amended bill of complaint and was argued by counsel; whereupon, on consideration thereof, it is this fourth day of June, 1888, ordered, adjudged, and decreed by the court that the said demurrer be, and the same is hereby, overruled, and that this cause be remanded to the special term in equity for further proceedings.

E. F. BINGHAM,
Chief Justice.

Leave to Answer.

Filed June 5, 1888.

In the Supreme Court of the District of Columbia.

JOSEPH M. BROWN
vs.
GRACE WYGANT, Executrix. } In Equity. No. 10666.

It is this 5th day of June, 1888, ordered that the defendant have leave to answer the amended bill in this cause within 20 days from this date.

W. S. COX, *Justice.*

18 *Answer of Grace Wygant, Executrix.*

Filed June 22, 1888.

In the Supreme Court of the District of Columbia.

JOSEPH M. BROWN
vs.
GRACE WYGANT, Executrix, &c. } In Equity. No. 10666.

The answer of Grace Wygant, executrix of Stephen T. Wygant, deceased, to the amended bill of complaint.

This defendant, now and at all times hereafter saving to herself all and all manner of benefit or advantage of exception or otherwise that may be taken to the errors and uncertainties in said amended bill contained, for answer to so much thereof as this defendant is advised it is necessary for her to answer, says:

1. She admits the allegations in the 1st, 2d, and 3d paragraphs of said amended bill.

2. Answering paragraphs 4th and 5th, this defendant says she has no knowledge or information except from hearsay that there ever were any proceedings in bankruptcy against her late husband, Stephen T. Wygant, in his lifetime, but she believes there were certain proceedings in bankruptcy against him; what those proceedings were she has no personal knowledge of, but she has always believed and she still believes, and she avers upon information and belief, that there have not been any such proceedings in bankruptcy against him as to divest her or her testator's estate of the legal or equitable title and interest in and to the judgment for $5,000 mentioned in said bill. She does not, therefore, admit any of the allegations concerning said bankruptcy proceedings, but she denies the same as alleged and demands the fullest and strictest proof thereof.

This defendant has understood and has believed and does believe that said bankruptcy proceedings were ended and fully and
19 finally disposed of, but the manner in which they were ended and *and* disposed of—whether by mutual agreement of all concerned or by technical proceedings in court from beginning to end—has never been known to this defendant.

She avers that she knows nothing of the alleged mention of said judgment upon any schedules in any bankruptcy proceedings nor of the claims allowed or disallowed, and she has no knowledge that any of said claimants are dissatisfied with said proceedings.

This defendant denies that the Mr. Smith, of the late firm of Ely and Smith, mentioned in said 5th paragraph, is or ever was her legal adviser.

3. In answer to the sixth paragraph, this defendant says she denies that the averments are true as therein stated. It is true that she applied for and obtained letters testamentary in the supreme court of the District of Columbia, but she avers that she did so as executrix of her late husband, the said Stephen T. Wygant, deceased, for the purpose of keeping alive said judgment, which was about to reach the statutory period of limitations, and not because it was of any material present value. She obtained said letters in perfect good faith, and in her petition for said letters she estimated the value of the judgment at more than she believes it would have sold for at auction or otherwise; but with a hope of realizing at some future day on property of said plaintiff that might be discovered, took out said letters to keep said judgment alive. She further says she did not believe the alleged proceedings in bankruptcy affected her title or interest in said judgment; that she never even thought of said proceedings in connection with said judgment in any way or manner, and the idea never occurred to her that said judgment or any interest therein was in any way or manner effected by said bankruptcy proceedings, and if said proceedings in any way effect the title of said Stephen T. Wygant or the title or interest of this defendant, as his executrix, in and to said
20 judgment she is not and never was aware of it. She avers

that no connection or relation of said judgment with said bankruptcy proceedings in any way occurred to her in applying for said letters testamentary in said supreme court nor in prosecuting said writs of *scire facias* nor in any of the proceedings to revive or keep alive said judgment, and she avers that she made no mention to her counsel of any bankruptcy proceedings in connection with said judgment or the proceedings to keep the same alive nor did it occur to her to do so. She further avers that she has no knowledge of the details of the proceedings to keep said judgment alive, but left them entirely to her said counsel, C. H. Armes, of Washington, D. C., for the proper legal proceedings. She has no knowledge of the whereabouts of the plaintiff at any time pending said proceedings, but she avers that she has for years, personally and by her employed agents and at considerable expense in money, tried unsuccessfully to secure service of writs upon said plaintiff personally for the purpose of keeping alive and realizing upon said judgment, but the plaintiff evaded such service until after the expiration of twelve years from the date of said judgment, when a writ was served upon him, as this defendant is informed and believes, in New York, and the plaintiff is now contesting the legality of said service.

4. In answer to paragraph seventh this defendant denies that there were no assets belonging to said estate in the District of Columbia.

Further answering said fifth paragraph, this defendant avers upon information and belief that before the return of said writs of *scire facias* by said marshal diligent search was made for said plaintiff and he could not be found in said District of Columbia.

5. This defendant denies that the plaintiff was not served with process in respect to the proceedings to revive said judgment
21 for $5,000, and she avers that the service which the law requires in the premises was duly had, executed, and performed by the returns of said writs by the marshal of said District, and this defendant claims the benefit thereof, but she knows nothing and requires proof as to the allegations of diligence contained in the 8th paragraph of said bill.

She admits that the motion filed on the law side of this honorable court to cause the proceedings touching the revival of said judgment to be set aside was overruled, but she is advised and so avers that the certified transcript of the record filed with said motion as evidence of its merits was not and could not have constituted a good defense to said proceedings.

6. This defendant admits that since obtaining said fiat mentioned in paragraph 9th she has endeavored to obtain a judgment in New York based upon said judgment in this court for the purpose of realizing upon any property of the plaintiff that may be found in New York, but she denies that that proceeding or any other proceeding by her in the premises is prosecuted to harrass the plaintiff or to cause him to pay more than he lawfully and equitably owes this defendant.

GRACE WYGANT,
Executrix of Stephen T. Wygant, Dec'd.

Grace Wygant, being duly sworn, says she has read the above answer, and that the averments made upon personal knowledge are true and those made upon information and belief she believes to be true.

GRACE WYGANT.

Subscribed and sworn to before me this 20th day of June, A. D. 1888.

[SEAL.] S. B. GOODALE,
Notary Public, N. Y. Co.

22 *Replication.*

Filed June 26, 1888.

In the Supreme Court of the District of Columbia.

JOSEPH M. BROWN
vs.
GRACE WYGANT, Executrix of Stephen T. Wygant, Deceased, *et al.*
} In Equity. No. 10666, Dock. 27.

Replication to answer of Grace Wygant, executrix, &c.

The complainant joins issue hereby with the defendant Grace Wygant, executrix of Stephen T. Wygant, deceased.

ROBERT CHRISTY,
Solicitor for Complainant.

Motion for Injunction.

Filed June 26, 1888.

In the Supreme Court of the District of Columbia.

JOSEPH M. BROWN
vs.
GRACE WYGANT, Executrix of Stephen T. Wygant, Deceased, *et al.*
} In Equity. No. 10666, Docket 27.

The complainant, Joseph M. Brown, now comes and moves the court for an injunction against the defendant Grace Wygant, executrix of Stephen T. Wygant, deceased, during the pendency of this suit, as prayed for in the said original and amended bills of complaint.

ROBERT CHRISTY,
Solicitor for Complainant.

23 *Stipulation.*

Filed June 30, 1888.

In the Supreme Court of the District of Columbia.

JOSEPH M. BROWN
vs.
GRACE WYGANT, Executrix of Stephen T. Wygant, Deceased, *et al.*
In Equity. No. 10666.

This cause is submitted to Justice Cox on the motion of the complainant for an injunction during the pendency of the suit, made by complainant.

Solicitor for defendant Wygant, executrix, insists that such motion should not be allowed on the bill and answer, the bankruptcy proceeding having been ended, as alleged in said answer.

June 30th, 1888.

ROBERT CHRISTY,
Sol. for Complainant.

Defendant claims the benefit of her answer.

C. H. ARMES,
Sol. for Defendant.

Decree.

Filed July 5, 1888.

In the Supreme Court of the District of Columbia.

JOSEPH M. BROWN
vs.
GRACE WYGANT, Executrix of Stephen T. Wygant, *et al.*
In Equity. No. 10666.

This cause came on to be further heard upon the motion of the said complainant for an injunction pending the suit against
24 the defendant Grace Wygant, executrix of Stephen T. Wygant, deceased, and was argued by counsel; whereupon, on consideration thereof, it is this fifth day of July, A. D. 1888, ordered, adjudged, and decreed that said motion be, and the same is hereby, allowed, and that the defendant Grace Wygant, executrix of Stephen T. Wygant, be enjoined from all proceedings to enforce the collection of the judgment mentioned in the original and amended bill of complaint, to wit, a judgment for the sum of $5,000.00 in favor of Thomas L. Raymond and against the complainant, Joseph Brown, on the 14th day of May, A. D. 1874, rendered on the law side of this court, and from all efforts to annoy or harrass the plaintiff in respect to said judgment during the pendency of this suit.

W. S. COX, *J.*

Order to Record Suggestion of Death of Godet.

Filed September 11, 1888.

In the Supreme Court of the District of Columbia.

JOSEPH M. BROWN *vs.* GRACE WYGANT, Executrix, &c., and HENRY T. GODET, Assignee in Bankruptcy, &c.	In Equity. No. 10666.

Comes now the defendant Grace Wygant, executrix, &c., by C. H. Armes, her solicitor, and informs the court that since the proceedings heretofore had in this cause the defendant Henry T. Godet, assignee in said cause mentioned, departed this life on or about the first day of September instant, in the State of New York.

It is thereupon, this eleventh day of September, 1888, ordered that the suggestion of the death of the said defendant, Henry T. Godet, assignee as aforesaid, be made of record herein.

W. S. COX, *J.*

Testimony on Behalf of Complainant.

Filed September 27, 1889.

In the Supreme Court of the District of Columbia, Holding an Equity Court for said District.

BROWN *vs.* WYGANT.	Equity. No. 10666.

DISTRICT OF COLUMBIA, *To wit:*

Be it remembered that at an examination of witnesses begun and held on the 5th day of June, A. D. 1889, and continued from time to time, as within noted, to the 18th day of September, A. D. 1889, when the within deposition was taken, I, Mason N. Richardson, an examiner in chancery, did cause to be personally present Joseph M. Brown to testify for and on behalf of the complainant in the above-entitled cause, with due and sufficient notice to counsel for defendant.

MASON N. RICHARDSON,
Examiner in Chancery.

In the Supreme Court of the District of Columbia, Holding an Equity Court for said District.

BROWN
vs. } Equity. No. 10666.
WYGANT.

Upon the application of R. Christy, Esq., solicitor for
26 the complainant, I, Mason N. Richardson, examiner, have this 3rd day of June, 1889, appointed Wednesday, June 5th, 1889, at the hour of 3 o'clock p. m. at the time, and the office of Mason N. Richardson, examiner, No. 344 D street, "Fendall building," as the place, in the city of Washington, District of Columbia, for the taking of testimony for and on behalf of the complainant in the above-entitled cause.

MASON N. RICHARDSON, *Examiner.*

To Mr. C. H. Armes, solicitor for defendant:

Please take notice that in accordance with the above notice I shall, on Wednesday, June 5th, 1889, at the hour of 3 o'clock p. m., at the office of Mason N. Richardson, Esq., 344 D street, "Fendall building," in the city of Washington, District of Columbia, proceed to take testimony for and on behalf of the complainant in the above-entitled cause.

(Signed) ROBERT CHRISTY,
Sol'r for Complainant.

Served June 3rd, 1889.
M. N. RICHARDSON, *Ex.*

In the Supreme Court of the District of Columbia, Holding an Equity Court for said District.

BROWN
vs. } Equity. No. 10666.
WYGANT.

WASHINGTON, D. C., *June 5th*, 1889—3 o'clock p. m.

Met, pursuant to aforegoing notice to counsel, at the office of Mason N. Richardson, Esq., examiner, "Fendall building," No. 344 D street, to take testimony for and on behalf of the complainant in the above-entitled cause.

Present: R. Christy, Esq., for and on behalf of the com-
27 plainant; C. H. Armes, Esq., for and on behalf of the respondent; the examiner, M. N. Richardson, Esq., and also witnesses for and on behalf of the complainant.

Whereupon Mr. C. H. Armes, solicitor for the defendant, hereupon objects to the taking of any testimony under the notice in this cause served for the reason that the assignee in bankruptcy, Godet, heretofore ordered to be made a party defendant to this cause, has deceased since the making of the said order and the suggestion of the death of the assignee in bankruptcy has been made in court, and since then no proceeding has been taken to substitute his ex-

ecutor or in any manner to revive the cause. I request that the question be certified to the equity court before further proceedings are taken.

R. Christy, Esq., counsel for complainant, not admitting that the preceeding objection is relevant, tenders for examination the witness who is here present ready to be sworn and to testify, and desires that this fact should be embraced in any certification made by the examiner if he concludes it to be his duty to submit the question to the justice holding the equity court of the supreme court of the District of Columbia.

Counsel for complainant further states that process, as appears from the records in the cause, was issued regularly against Godet, then in full life and acting as such assignee, which was returned "not found" by the marshal.

Counsel for complainant now tenders Joseph M. Brown, the complainant, as a witness and asks that he be sworn and examined touching the residence of the decedent at and before his death and as to such facts as may be within his knowledge as to the appointment of a successor to said decedent assignee, announcing that his intention is to confine the examination of the witness wholly as to such questions as may arise out of the objection made by counsel for the defendant Wygant, executrix.

28 C. H. ARMES, Esq.: To which I renew my objection that any proceeding for the purpose mentioned would be of record in the court where the bankruptcy proceedings were said to be pending, and I ask that the question be certified to the court; and, further, on the ground that the cause is not in condition for the taking of testimony in this examination.

R. Christy, Esq., counsel for complainant states that he expects to prove by the witness that he examined the records in the district court of the United States for the southern district of New York, where such bankruptcy proceedings were pending and by which the assignee, Godet, was appointed, and that no steps appear of record to have been taken for the appointment of any successor to such assignee; and, further, that there is nothing showing any intent on the part of the creditors of the estate of Stephen T. Wygant, deceased, the defendant's testatrix, to appoint any successor.

And now, at the request of the solicitor for the defendant, as above made, the examiner hereby certifies the said objections of counsel to the justice holding a special term for the transaction of equity business for such disposition as to the court may seem proper and fit and for such instruction in the premises as will inform the examiner as to whether he shall proceed in the taking of the testimony at this stage of the cause notwithstanding said objections.

MASON N. RICHARDSON, *Examiner.*

In the Supreme Court of the District of Columbia.

JOSEPH M. BROWN
vs.
GRACE WYGANT, Executrix, &c., *et al.* } In Equity. No. 10666.

29 The examiner before whom testimony was being taken on behalf of the plaintiff in this cause having certified to the equity term of this court a question involving the right of the plaintiff to offer testimony of the character as set forth in such certificate of the examiner, and counsel having been heard in respect thereto, it is ordered that such examiner shall permit such testimony to be taken on behalf of said plaintiff.

This 7th day of September, A. D. 1889.

W. S. COX, *J.*

COMPLAINANT'S EXHIBIT "A."

Assignment of Bankrupt Effects.

Form No. 18.

In the District Court of the United States for the Southern District of New York.

In the Matter of STEPHEN WYGANT, Bankrupt. In Bankruptcy.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Know all men by these presents that Henry T. Godet, Esquire, of the city of New York, in the county of New York and State of New York, in said district has been duly appointed assignee in said matter. Now, therefore, I, Henry Wilder Allen, register in bankruptcy of said district, by virtue of the authority vested in me by the 14th section of an act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2d, 1867, do hereby convey and assign to the said Henry T. Godet, Esquire, assignee as aforesaid, all the estate, real and personal, of the said Stephen T. Wygant, bankrupt as aforesaid, including all the property of whatever kind of which he was possessed or in which he was interested or which he was entitled to have on the sixteenth day of February, A. D. 1878, with all
30 his deeds, books, and papers relating thereto, excepting such property as is exempted from the operation of this assignment by the provisions of said fourteenth section of said act:

To have and to hold all the foregoing premises to the said Henry T. Godet, Esquire, and his heirs forever, in trust, nevertheless, for the use and purpose, with the powers, and subject to the conditions and limitations set forth in said act.

In witness whereof I, the said register, have hereunto set my

hand and caused the seal of said court to be affixed this 23rd day of March, A. D. 1878.

[L. S. OF THE COURT] HENRY WILDER ALLEN,
Register in Bankruptcy.

Filed on the fourth day of October, 1888, at 1 o'clock p. m.

I, Sam'l H. Lyman, clerk of the district court of the United States for the southern district of New York, do hereby certify that the original assignment made in the above-entitled matter has been rendered in this office, and that the above is a true copy of the record thereof.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, this fourth day of October, in the year of our Lord one thousand eight hundred and eighty-eight, and of the Independence of the said United States the one hundred and thirteenth.

[SEAL.] SAM'L H. LYMAN, *Clerk.*

WASHINGTON, D. C., *September 14th*, 1889—2 o'clock p. m.

Met pursuant to order of the court heretofore passed on the 7th day of September, A. D. 1889.

Present: Mr. Robert I. Christy, for complainant; the com-
31 plainant, Mr. Joseph M. Brown; the examiner, Mason N. Richardson.

The examiner stated that he had been unable to give Mr. Armes notice of the meeting to take testimony at the hour above stated.

The taking of testimony was thereupon adjourned until a time could be agreed upon with counsel for defendant for the taking of testimony pursuant to the order of the court.

MASON N. RICHARDSON, *Examiner.*

WASHINGTON, D. C., *Sept. 18th*, 1889—2 o'clock p. m.

Met, pursuant to notice to counsel, at the office of Mason N. Richardson, examiner, "Fendall building."

Present: Mr. Robert I. Christy, for complainant; Mr. C. A. Armes, for the defendant; the examiner, Mr. M. N. Richardson, and the witness, Mr. Joseph M. Brown.

Whereupon JOSEPH M. BROWN, a witness of lawful age, being by me first duly sworn according to law, testifies as follows:

By Mr. CHRISTY:

Q. You may state whether you called upon Henry T. Godet, and, if "yea," where it was and when it was, with reference to the history of this suit.

Mr. ARMES: Objected to as irrelevant.

WITNESS: I called upon Henry T. Godet at his office, I think, in Broad street, New York. I called a short time, almost immediately, after the order of the court making him a party to this suit,
32 a few days after the order of the court and the subpœna had been issued and returned.

Q. You may state any declaration that he made in respect to the suit and what was said, if anything, in regard to the order in the cause making him a party.

Mr. ARMES: Objected to; incompetent to introduce conversations that he had with Godett.

WITNESS: When I saw him I spoke to him in regard to his being made a party to the suit in Washington. I told him that he had been made a party. He said that he knew all about it. He knew that he had been made a party, and knew all about it, about the suit in Washington, but that the suit at law for revival had been commenced and prosecuted without his knowledge and not in his interest in any way by Mrs. Wygant, and therefore he would have nothing to do with it. He spoke very decidedly about it. He said, "I will have nothing to do with it."

Mr. ARMES: I move to strike out the answer as incompetent.

Q. What did he say, if anything, about the proceedings to revive the judgment at law?

Mr. ARMES: Objected to for previous reasons.

WITNESS: He said it was brought without his consent and without his knowledge or consent.

Q. What knowledge have you of Mrs. Wygant, the executrix, having any information in respect to the bankruptcy suit?

A. I have this information: I had a conversation with Mrs. Wygant in reference to it.

Q. Now, when was that?

A. That was early in 1886. I called on her at her residence in Keyport, New Jersey, at her home. She admitted to me the bankruptcy of her husband and excused it on this ground: That one Charles P. Crosby, of New York, had induced her husband, Stephen T. Wygant, to go on a bond in the sum of fifty thousand dollars, assuring her husband that it was simply a formal matter, and that
33 he went on this bond; and this act of his going on the bond, as she said, compelled him to pay and forced him into bankruptcy. She also further stated that her husband's life policy of forty thousand dollars was not influenced in any way by the bankruptcy proceedings; that she had obtained that sum from the company; it was not effected by the bankruptcy in any way.

Q. What did she say, if anything, about her knowledge of an assignee being appointed?

A. She spoke of Godett, the assignee, and said that he was a friend of her husband's; that he had been a friend of her husband's

a long time, and that he had been appointed the assignee, and was the assignee.

Q. What was said in the conversation with Godett about an assignment to him of the effects of the bankruptcy and where the paper was?

A. Godett went on to say that he was a friend of Wygant's, and that his counsel and Mr. Wygant's were the same in the bankruptcy proceedings Smith and Ely; that the original assignment of Wygant's was in the hands of Smith and Ely, as he believed.

Q. As a resultant of that information did you obtain a certified copy of that assignment?

A. I did. I obtained a certified copy of the assignment from the clerk of the United States district court of the southern district of New York.

Q. Have you that assignment?

A. I have it and will produce it. This document that he gave me was signed and sealed in my presence, which the clerk sealed and signed in my presence.

(Witness having produced the said assignment and handed the same to the examiner, the same is herewith marked Exhibit "A" and filed herewith.—Mason N. Richardson, examiner.

Mr. ARMES: All of the aforegoing questions and answers objected to as irrelevant, immaterial, and incompetent.

34 Mr. CHRISTY: Counsel for complainant Brown hereupon introduces the several exhibits referred to in his bill of complaint and all the papers in the suit at law in this court, being No. 11757, Thomas L. Raymond, plaintiff, *vs.* Joseph M. Brown, defendant.

Likewise counsel for complainant introduces as part of the evidence in this cause the certified copy of the schedule and inventory in the matter of bankruptcy of Stephen T. Wygant, which is marked Exhibit "C."

And likewise a certified copy of petition for a discharge and other papers connected therewith, which is filed and marked Exhibit "D."

Counsel for Brown likewise gives notice that on the hearing of this cause he will produce the record and the papers on file in said cause No. 11757, at law, Raymond *vs.* Brown, as a part of the evidence for complainant in this cause.

Mr. ARMES: I object to the introduction of any exhibits and all testimony in this case on the ground that the cause is not in a condition for the taking of testimony and for other reasons sufficient in law.

JOSEPH M. BROWN.

Subscribed and sworn to before me this 18th day of September, A. D. 1889.

MASON N. RICHARDSON,
Examiner in Chancery.

DISTRICT OF COLUMBIA, *To wit:*

I, Mason N. Richardson, an examiner in chancery, do hereby certify that the within depositions were duly taken down in shorthand by me from the oral statements of the witness Joseph M. Brown, in the city of Washington, District of Columbia, at the times and places within specified. I further certify that after taking the said deposition in shorthand it was by me transcribed and reduced to typewritten print, and was then read over by the witness in
35 my presence and then and there by him signed.

I further certify that said witness was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth.

I further certify that I am not of counsel for any of the parties in this suit and in no way interested in the issue hereof.

My fee, $10.00, paid by Mr. Joseph M. Brown.

MASON N. RICHARDSON,
Examiner in Chancery.

36. Supreme Court of the District of Columbia.

Copy of Docket Entries.

No.	Parties.	Action.	Plaintiff's att'y.	Defendant's att'y.
11757	Thomas L. Raymond, use of Henry Leeds, assignee, *vs.* Joseph M. Brown.	Note, $5,000	John E. Norris. C. H. Armes. A. A. Birney.	Rob't Christy.

Date.		Proceedings.
1874, Jan.	6	Deposit toward costs, $10, by Norris. Order, &c., dec., notice, affi., and 2 notes filed.
"	" "	Summons (2) and copy of dec., notice, & affi. issued.
"	" 8	" " " " " " " served.
"	Feb. 9	Judgment confessed for $5,000, with int. from Aug. 15, 1873, execution to be stayed 90 days. (M. 9, p. 102.)
"	May 14	Judgment assigned to Stephen T. Wygant by order of pl'ff.
"	" "	Execution stayed for twelve months. John E. Norris, att'y for pl't'ff.
1886, Feb.	1	*Death* of Stephen T. Wygant suggested and Grace Wygant, his executrix, substituted in his place (M. 20, p. 157), appr. of Armes.
"	" "	*Scire facias*, writ of, & 1 copy issued, order filed.
"	" "	" " " " returned "*nihil.*"
"	" 4	*Scire* " (alias), writ of, & copy issued, order filed.
"	Mch 3	" " " " " ret'd "*nihil.*"
"	" 4	Fiat on *scire facias.* (M. 20, p. 210.)
1887, Apr.	6	Special appearance of Christy for def't. Motion to vacate fiat, quash *sci. fa.*, &c., filed.
"	May 28	Certified copy of bankrupt proceedings filed.
"	June 4	Motion to vacate fiat, &c., filed April 6, '87, overruled. (M. 21, p. 272.)
"	" 10	Add'l costs, $4.50, paid by Mr. Armes.
1892, May	7	Judg't entered to use of Henry Leeds, assignee in bankruptcy of Stephen T. Wygant, dec'd. Order of Grace Wygant filed.
"	" "	Appearance of Birney for Henry Leeds, assignee.
"	" "	*Fi. fa.* issued. Ret'd July 6, '92. "*nulla bona.*"

37 COMPLAINANT'S EXHIBIT "C." Filed March 28, 1878.

UNITED STATES OF AMERICA, } ss.:
Southern District of New York, }

I, Samuel H. Lyman, clerk of the district court of the United States of America for the southern district of New York, do hereby certify that the writings annexed to this certificate have been compared by me with their originals on file and remaining of record in my office; that they are correct transcripts therefrom and of the whole of the said originals.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, this 24th day of March, in the year of our Lord one thousand eight hundred and eighty-seven, and of the Independence of the said United States the one hundred and eleventh.

[SEAL.] SAM'L H. LYMAN, *Clerk.*

38 U. S. bankrupt act, March 2, 1867.—Secs. 11, 28, 37, and G. O. 32. Philp & Solomons, Government stationers, Washington, D. C.

SCHEDULE A.—1.—(As approved.)

In the Matter of STEPHEN T. WYGANT, Bankrupt.

Statement of All Creditors Who Are to be Paid in Full or to Whom Priority is Secured.

Order of payment.—Preferred claims: 1st. Debts due the United States, and taxes and assessments under the laws thereof. 2d. Debts due to the State of ——, and taxes and assessments under the laws of said State. 3d. Wages due clerks or servants, &c., under class four, section 28, to an amount not exceeding $50, for labor performed, within six months. 4th. Other debts preferred by said act.

Reference to ledger or voucher.	Names of creditors.	Residences and occupations of creditors.	Amount. Dollars. Cts.	When and where contracted.	Nature and consideration of the debt and whether contracted as copartner or joint contractor; and, if so, with whom.
	None.....	.....	None.	.....	None.

STEPHEN T. WYGANT.

Entered according to act of Congress, in the year 1867, by Philp & Solomons, in the clerk's office of the supreme court of the District of Columbia.

SCHEDULE A.—2.—(As approved.)

In the Matter of —— ——, Bankrupt.

Creditors Holding Securities.

N. B.—Particulars of securities held, with date of same, and when given, are to be stated under the names of the several creditors, and also particulars concerning each debt, as required by the 11th section of the act, and whether contracted as copartner or joint contractor with any other person; and, if so, with whom.

Reference to ledger or voucher.	Names of creditors.	Residence and occupation.	When and where contracted.	Value of securities.		Amount of debts.		Particulars.
				Dollars.	Cts.	Dollars.	Cts.	
None.....	David J. Blauvelt..	Nyack, N. Y.; banker.	August, 1872; New York city.	1,500	00	1,500	00	Bond of bankruptcy given said creditor on or about said date as security, for which he at the same time executed a purchase-money mortgage on premises at Keyport, New Jersey, on said day purchased from said creditor by said bankrupt, consisting of a house and about four acres of land.

STEPHEN T. WYGANT.

Entered according to act of Congress, in the year 1867, by Philp & Solomons, in the clerk's office of the supreme court of the District of Columbia.

SCHEDULE A.—3.—(As approved.)

In the Matter of STEPHEN T. WYGANT, Bankrupt.

Creditors Whose Claims Are Unsecured.

N. B.—When the name and residence (or either) of any maker, endorser, or holder of any bill or note, &c., are unknown the fact must be stated, and also the name, residence, and occupation of the last holder known to the petitioner. The debt due to each creditor must be stated in full, and any claim by way of set-off stated in the schedule of property; the nature of each debt and demand, whether founded on written security, obligation, contract, or otherwise, and also the true cause and consideration of such indebtedness in each case and the place where such indebtedness accrued.

Reference to ledger or voucher.	Names of creditors.	Residence and occupations.	Amount.		When and where contracted.	Nature and consideration of the debt and whether any judgment, bond, bill of exchange, promissory note, &c., and whether contracted as copartner or joint contractor with any *othe* other person; and, if so, with whom.
			Dollars.	Cts.		
None.....	George F. Fallman.	No. 30 West 34th St., N. Y. city; banker.	6,316	73	June 29th and July 1st, 1875; New York city.	A due bill given by bankrupt to said creditor for interest due on moneys previously loaned, dated June 29th, 1875, due August 12th, 1875. Also promissory note given by bankrupt, dated July 1st, 1875, payable to said creditor on demand, for $6,000, with interest. Said note was given for money loaned.
Book of ac-c't, p. 112.	Matilda Peirce.....	No. 257 West 14th St., N. Y. city; lady.	4,876	76	1868 to November 10th, 1877; New York city.	Moneys loaned to and moneys collected and retained by bankrupt. Said sum is the balance of the accounts between bankrupt and said creditor showing loans, collections, and payments.

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None.....	Edwin Wygant	No. 68 Dey St., N. Y. city; grocer.	1,879	35	June 10th, 1873, September 5th, 1877; New York city.	Two promissory notes, dated June 10th, 1873, and September 5th, 1877, for $648.55 and $1,152.60, payable three months after date said creditor's order respectively, with interest. Judgment was entered therein on February 7th, 1878, for $1,879.35 in the office of the clerk of the city and county of New York.

STEPHEN T. WYGANT.

Entered according to act of Congress, in the year 1867, by Philp & Solomons, in the clerk's office of the supreme court of the District of Columbia.

SCHEDULE A.—3.—(As approved.)

In the Matter of STEPHEN T. WYGANT, Bankrupt.

Creditors Whose Claims Are Unsecured.

N. B.—When the name and residence (or either) of any maker, endorser, or holder of any bill or note, &c., are unknown the fact must be stated, and also the name, residence, and occupation of the last holder known to the petitioner. The debt due to each creditor must be stated in full and any claim by way of set-off stated in the schedule of property; the nature of each debt and demand, whether founded on written security, obligation, contract, or otherwise, and also the true cause and consideration of such indebtedness in each case and the place where such indebtedness accrued.

Reference to ledger or voucher.	Names of creditors.	Residences and occupations.	Amount.		When and where contracted.	Nature and consideration of the debt and whether any judgment, bond, bill of exchange, promissory note, &c., and whether contracted as copartner or joint contractor with any other person; and, if so, with whom.
			Dollars.	Cts.		
None.....	The mayor, aldermen, and commonalty of the city of New York.	New York city.....	132	50	1877; New York city.	Personal taxes for year 1877.
None.....	The Security Bank of the City of New York.	New York city; banking corporation.	3,026	39	December, 1871; New York city.	Bankrupt executed as surety with others a bond for Haynes & Warren as *as* assignee for the benefit of creditors of James L. Andrus and John H. Andrus, which bond was duly filed in the city and county of New York.

						That thereafter said bank brought an action in the supreme court in said county on behalf of itself and the other creditors, to wit, J. C. Bloomfield & Co., Charles P. Crosby, Jared Brewster, William Redmond & Son, and Cyrus J. Murray, against said assignee to account, &c., and judgment was rendered showing a balance in his hands of $14,175.55, and the said bank has brought an action in the court of common pleas on behalf of itself and said other creditors to recover said last-mentioned sum on said bond, and issue is joined in said action and it is awaiting trial.
None.....	Charles P. Crosby..	120 Broadway, N. Y. city; counsellor-at-law.	1,182	59	December, 1871; New York city.	Same as in case of Security bank, fully set out above.

STEPHEN T. WYGANT.

Entered according to act of Congress, in the year 1867, by Philp & Solomons, in the clerk's office of the supreme court of the District of Columbia.

SCHEDULE A.—3.—(As approved.)

In the Matter of STEPHEN T. WYGANT, Bankrupt.

Creditors Whose Claims Are Unsecured.

N. B.—When the name and residence (or either) of any maker, endorser, or holder of any bill or note, &c., are unknown the fact must be stated, and also the name, residence, and occupation of the last holder known to the petitioner. The debt due to each creditor must be stated in full, and any claim by way of set-off stated in the schedule of property; the nature of each debt and demand, whether founded on written security, obligation, contract, or otherwise, and also the true cause and consideration of such indebtedness in each case, and the place where such indebtedness accrued.

Reference to ledger or voucher.	Names of creditors.	Residences and occupations.	Amount.		When and where contracted.	Nature and consideration of the debt and whether any judgment, bond, bill of exchange, promissory note, &c., and whether contracted as copartner or joint contractor with any other person; and, if so, with whom.
			Dollars.	Cts.		
None.....	Jared Brewster....	Brooklyn, N. Y.; occupation unknown.	6,719	04	December, 1871; New York city.	Same as in the case of the Security bank; fully set out above.
None.....	William Redmond & Son.	No. 54 Leonard St., New York city; occupation unknown.	1,953	04		
None.....	Cyrus J. Murray...	No. 343 Broadway, New York city; occupation unknown.	5,155	97	December, 1871; New York city.	Same as in the case of the Security bank above.

STEPHEN T. WYGANT.

Entered according to act of Congress, in the year 1867, by Philp & Solomons, in the clerk's office of the supreme court of the District of Columbia.

45 U. S. bankrupt act, March 2, 1867.—Secs. 11, 36, 39, 43. W. Reid Gould, successor to Jansen & Bell, 158 Nassau St., N. Y.

SCHEDULE A.—4.—(As approved.)

In the Matter of STEPHEN T. WYGANT, Bankrupt.

Liabilities on Bills Discounted Which Ought to be Paid by the Acceptors.

N. B.—The dates of the bills or notes and when due, with the names, residences, and business or occupation of the makers or drawers and acceptors thereof are to be set forth under the names of the holders. If the names of the holders are not known the name of the last holder known to petitioner should be stated, and his business and place of residence. Same particulars as to notes on which petitioner is liable as endorser.

Ref'ce to ledger or voucher.	Names of holders as far as known.	Place of residence & occupation.	When & where contracted.	Amount.		Nature of liability, whether same was contracted as copartner or joint contractor or with any other person; and, if so, with whom.
				Dollars.	Cts.	
None.....	.....	None.....	None.....	None.		

All the foregoing debts and liabilities were contracted and incurred by the bankrupt individually and not as copartner or joint contractor with any one excepting as stated, and no judgment has been recorded against said bankrupt, and no bond, bill of exchange, or promissory note given by him for any such indebtedness except as hereinbefore stated.

STEPHEN T. WYGANT.

Entered according to act of Congress, in the year 1867, by Philp & Solomons, in the clerk's office of the supreme court of the District of Columbia.

SCHEDULE A.—5.—(As approved.)

In the Matter of STEPHEN T. WYGANT, Bankrupt.

Accommodation Paper.

N. B.—The dates of notes or bills and when due, with the names, residences, and business or occupation of the makers or drawers and acceptors thereof, are to be set forth under the names of the holders. If the bankrupt be liable as maker, drawer, acceptor, or endorser thereof it is to be stated accordingly. If the names of the holders are not known the names of the last holder known to the petitioner should be stated, with his business and place of residence. Same particulars as to other commercial paper.

Ref'ce to ledger or voucher.	Names of holders.	Residences of holders and particulars of bills, &c.	Name of maker, endorser, or acceptor.	Place where contracted.	Amount.		Whether liability was contracted as copartner or joint contractor or with any other person; and, if so, with whom.
					Amount.	Dolls.	
None.....	.....	None.....	.....	.....	No	ne.	

STEPHEN T. WYGANT.

Entered according to act of Congress, in the year 1867, by Philp & Solomons, in the clerk's office of the supreme court of the District of Columbia.

47 *Oath to Schedule A, (as Approved.)*

UNITED STATES OF AMERICA, }
Southern District of New York, } *ss:*

On this 28 day of March, A. D. 1878, before me personally came Stephen T. Wygant, the person mentioned in and who subscribed to the foregoing petition and to the schedule marked A, thereto annexed, and who, being by me first duly sworn, did declare the said schedule, as composed of seven sheets of paper, respectively indicated thus, A 1, A 2, 3, A 3, A 4, A 5, to be a full and true statement of all his debts and, so far as possible, to whom due, with the place of residence of each creditor, the sum due to each creditor; also the nature of each debt or demand and the true cause and consideration of such indebtedness in each case and where contracted, and a statement of any lien or security given for the payment of the same, in accordance with the Revised Statutes of the United States, title "Bankruptcy," and the acts amending the same.

HENRY WILDER ALLEN,
Register in Bankruptcy.

Entered according to act of Congress, in the year 1867, by Philp & Solomons, in the clerk's office of the supreme court of the District of Columbia.

H. Anstice & Co., stationers, 23 Nassau street, N. Y.

SCHEDULE B.—1.—Inventory.

Statement of all real and personal estate and effects whatever which are now in possession, enjoyment, or under the control of the petitioner or which are held by any other person in trust for his use or to the possession or enjoyment of which he is entitled at the date of filing the petition.

(*Interest in Lands.*)

In the Matter of STEPHEN T. WYGANT, Bankrupt.

Particular description of all real estate owned by the petitioner or held by him and whether under contract or lease.	Encumbrances thereon, if any, and dates thereof.	Statement of all particulars relating thereto.	Estimated value.	
			$	Cts.
About four acres of land at Keyport township of Raritan, county of Monmouth, in the State of New Jersey, with two-story frame house and a shed thereon.	Mortgage, on which a balance of $1,500, with interest from August 16, 1877, is due. Mortgage is past due and bears date Aug. 16, 1872.	Bankrupt is unable to state the value of the premises with any degree of accuracy. He paid for the same in August, 1872, $4,000. It would probably not sell at the present time at auction for more than the amount due on the mortgage.	2,000	00
One lot 80 feet in front and rear by 106 feet deep on north side Pine St., in Keyport, New Jersey.	None.....	About.....	75	00
An undivided one-third interest in eleven acres or thereabouts of land in Quincy, county of Adams, State of Illinois.	None.....	About.....	250	00

STEPHEN T. WYGANT.

49 U. S. bankruptcy act, March 2, 1867.—Secs. 11, 36, 39, 43.

Philp & Solomons, Government stationers, Washington, D. C.

(As approved.)

SCHEDULE B.—2.—(Inventory.)

In the Matter of STEPHEN T. WYGANT, Bankrupt.

Personal Property.

A.—Cash on hand.	Dollars.	Cts.
None	None.	

STEPHEN T. WYGANT.

50 U. S. bankruptcy act, March 2, 1867.—Secs. 11, 36, 39, 43.

Philp & Solomons, Government stationers, Washington, D. C.

(As approved.)

SCHEDULE B.—2.—(Inventory.)

In the Matter of STEPHEN T. WYGANT, Bankrupt.

Personal Property.

B.—Bills of exchange, promissory notes, or securities of any description.	Dollars.	Cts.
None		

STEPHEN T. WYGANT.

51 U. S. bankrupt act, March 2, 1867.—Secs. 11, 36, 39, 43.

Philp & Solomons, Government stationers, Washington, D. C.

(As approved.)

SCHEDULE B.—2.—(Inventory.)

In the Matter of STEPHEN T. WYGANT, Bankrupt.

Personal Property.

G.—Stock in trade in my business, at—	Dollars.	Cts.
None		

STEPHEN T. WYGANT.

52 U. S. bankruptcy act, March 2, 1867.—Secs. 11, 36, 39, 43.

Philp & Solomons, Government stationers, Washington, D. C.

(As approved.)

SCHEDULE B.—2.—(Inventory.)

In the Matter of STEPHEN T. WYGANT, Bankrupt.

Personal Property.

D.—Household goods & furniture, household stores, wearing apparel, & ornaments of the person.	Dollars.	Cts.
None		

STEPHEN T. WYGANT.

53 U. S. bankrupt act, March 2, 1867.—Secs. 11, 36, 39, 43.

Philp & Solomons, Government stationers, Washington, D. C.

(As approved.)

SCHEDULE B.—2.—(Inventory.)

In the Matter of STEPHEN T. WYGANT, Bankrupt.

Personal Property.

E.—Books, prints, and pictures.	Dollars.	Cts.
None		

STEPHEN T. WYGANT.

54 U. S. bankruptcy act, March 2, 1867.—Secs. 11, 36, 39, 43.

Philp & Solomons, Government stationers, Washington, D. C.

(As approved.)

SCHEDULE B.—2.—(Inventory.)

In the Matter of STEPHEN T. WYGANT, Bankrupt.

Personal Property.

F.—Horses, cows, sheep, and other animals.	Dollars.	Cts.
None		

STEPHEN T. WYGANT.

55 U. S. bankruptcy act, March 2, 1867.—Secs. 11, 36, 39, 43.

Philp & Solomons, Government stationers, Washington, D. C.

(As approved.)

SCHEDULE B.—2.—(Inventory.)

In the Matter of STEPHEN T. WYGANT, Bankrupt.

Personal Property.

G.—Carriages and other vehicles.	Dollars.	Cts.
None		

STEPHEN T. WYGANT.

56 U. S. bankrupt act, March 2, 1867.—Secs. 11, 36, 39, 43.

Philp & Solomons, Government stationers, Washington, D. C.

(As approved.)

SCHEDULE B.—2.—(Inventory.)

In the Matter of STEPHEN T. WYGANT, Bankrupt.

Personal Property.

H.—Farming stock and implements of husbandry.	Dollars.	Cts.
None		

STEPHEN T. WYGANT.

57 U. S. bankruptcy act, March 2, 1867.—Secs. 11, 36, 39, 43.

Philp & Solomons, Government stationers, Washington, D. C.

(As approved.)

SCHEDULE B.—2.—(Inventory.)

In the Matter of STEPHEN T. WYGANT, Bankrupt.

Personal Property.

I.—Shipping and shares in vessels.	Dollars.	Cts.
None		

STEPHEN T. WYGANT.

58 U. S. bankruptcy act, March 2, 1867.—Secs. 11, 36, 39, 43.

Philp & Solomons, Government stationers, Washington, D. C.

(As approved.)

SCHEDULE B.—2.—(Inventory.)

In the Matter of STEPHEN T. WYGANT, Bankrupt.

Personal Property.

K.—Machinery, fixtures, & apparatus used in business, with the place where each is situated.	Dollars.	Cts.
None.....		

STEPHEN T. WYGANT.

59 U. S. bankrupt act, March 2, 1867.—Secs. 11, 36, 39, 43.

Philp & Solomons, Government stationers, Washington, D. C.

(As approved.)

SCHEDULE B.—2.—(Inventory.)

In the Matter of STEPHEN T. WYGANT, Bankrupt.

Personal Property.

L.—Goods or personal property of any other description, with the place where each is situated.	Dollars.	Cts.
None.....		

STEPHEN T. WYGANT.

60 U. S. bankruptcy act, March 2, 1867.—Secs. 11, 36, 39, 43.

Philp & Solomons, Government stationers, Washington, D. C.

(As approved.)

SCHEDULE B.—3.—(Inventory.)

In the Matter of STEPHEN T. WYGANT, Bankrupt.

Choses in Action.

A.—Debts due petitioner on open account.	Dollars.	Cts.
Stephen H. Ingersoll, Mott Haven, N. Y. (worthless).	995	76
J. Mansfield Brown, Washington, D. C., judgment recorded in court in Washington Feb'y 9, 1874, for $5,000, for security for payment of which said Brown procured bankrupt a policy of insurance on his life for $6,500, dated May 12, 1876, in Connecticut Mutual Life Insurance Co.	5,000	00

STEPHEN T. WYGANT.

61 U. S. bankrupt act, March 2, 1867.—Secs. 11, 36, 39, 43.

Philp & Solomons, Government stationers, Washington, D. C.

(As approved.)

SCHEDULE B.—3.—(Inventory.)

In the Matter of STEPHEN T. WYGANT, Bankrupt.

Choses in Action.

B.—Stocks in incorporated companies and interest in joint stock companies.	Dollars.	Cts.
None		

STEPHEN T. WYGANT.

62 U. S. bankrupt act, March 2, 1867.—Secs. 11, 36, 39, 43.

Philp & Solomons, Government stationers, Washington, D. C.

(As approved.)

SCHEDULE B.—3.—(Inventory.)

In the Matter of STEPHEN T. WYGANT, Bankrupt.

Choses in Action.

C.—Policies of insurance.	Dollars.	Cts.
Policy of insurance No. 139,168 in the Connecticut Mutual Life Insurance Company for $6,500, dated May 12, 1876, on the life of J. Mansfield Brown, of Washington, D. C., and made payable to bankrupt to secure payment of a judgment for $5,000..	6,500	00
No other policies excepting certain policies on bankrupt's life, payable to his wife in the event of his death, and one accident policy, payable to his mother.		

STEPHEN T. WYGANT.

63 U. S. bankrupt act, March 2, 1867.—Secs. 11, 36, 39, 43.

Philp & Solomons, Government stationers, Washington, D. C.

(As approved.)

SCHEDULE B.—3.—(Inventory.)

In the Matter of STEPHEN T. WYGANT, Bankrupt.

Choses in Action.

D.—Unliquidated claims of every nature, with their estimated value.	Dollars.	Cts.
None.....		

STEPHEN T. WYGANT.

64 U. S. bankrupt act, March 2, 1867.—Secs. 11, 36, 39, 43.

Philp & Solomons, Government stationers, Washington, D. C.

(As approved.)

SCHEDULE B.—4.—(Inventory.)

In the Matter of STEPHEN T. WYGANT, Bankrupt.

Property in Reversion, Remainder, or Expectancy,

Including property held in trust for —— ——, or subject to any power or right to dispose of or to charge.

N. B.—A particular description must be entered. If all or any of the debtor's property has been conveyed by deed of assignment or otherwise for the benefit of creditors the date of such deed should be stated, the name and address of the person to whom the property was conveyed, the amount realized from the proceeds thereof, and the disposal of the same, so far as known to the petitioner.

A.—Interest in land.	Supposed value.	
	Dollars.	Cents.
None.....		

STEPHEN T. WYGANT.

65 U. S. bankrupt act, March 2, 1867.—Secs. 11, 36, 39, 43.

Philp & Solomons, Government stationers, Washington, D. C.

(As approved.)

SCHEDULE B.—4.—(Inventory.)

In the Matter of STEPHEN T. WYGANT, Bankrupt.

Property in Reversion, Remainder, or Expectancy,

Including property held in trust for —— ——, or subject to any power or right to dispose of or to charge.

N. B.—A particular description must be entered. If all or any of the debtor's property has been conveyed by deed of assignment or otherwise for the benefit of creditors the date of such deed should be stated, the name and address of the person to whom the property was conveyed, the amount realized from the proceeds thereof, and the disposal of the same, so far as known to the petitioner.

B.—Personal property.	Supposed value.	
	Dollars.	Cents.
None.....		

STEPHEN T. WYGANT.

66 U. S. bankrupt act, March 2, 1867.—Secs. 11, 36, 39, 43.

Philp & Solomons, Government stationers, Washington, D. C.

(As approved.)

SCHEDULE B.—4.—(Inventory.)

In the Matter of STEPHEN T. WYGANT, Bankrupt.

Property in Reversion, Remainder, or Expectancy,

Including property held in trust for —— ——, or subject to any power or right to dispose of or to charge.

N. B.—A particular description must be entered. If all or any of the debtor's property has been conveyed by deed of assignment or otherwise for the benefit of creditors the date of such deed should be stated, the name and address of the person to whom the property was conveyed, the amount realized from the proceeds thereof, and the disposal of the same, so far as known to the petitioner.

C.—Property in money, stocks, shares, bonds, annuities, &c.	Supposed value.	
	Dollars.	Cents.
None.....		

STEPHEN T. WYGANT.

67 U. S. bankrupt act, March 2, 1867.—Secs. 11, 36, 39, 43.

Philp & Solomons, Government stationers, Washington, D. C.

(As approved.)

SCHEDULE B.—4.—(Inventory.)

In the Matter of STEPHEN T. WYGANT, Bankrupt.

Property in Reversion, Remainder, or Expectancy,

Including property held in trust for —— ——, or subject to any power or right to dispose of or to charge.

N. B.—A particular description must be entered. If all or any of the debtor's property has been conveyed by deed of assignment or otherwise for the benefit of creditors the date of such deed should be stated, the name and address of the person to whom the property was conveyed, the amount realized from the proceeds thereof, and the disposal of the same, so far as known to the petitioner.

D.—Rights and powers.	Supposed value.	
	Dollars.	Cents.
None.....		

STEPHEN T. WYGANT.

68 U. S. bankrupt act, March 2, 1867.—Secs. 11, 36, 39, 43.

Philp & Solomons, Government stationers, Washington, D. C.

(As approved.)

SCHEDULE B.—4.—(Inventory.)

In the Matter of STEPHEN T. WYGANT, Bankrupt.

Property in Reversion, Remainder, or Expectancy,

Including property held in trust for —— ——, or subject to any power or right to dispose of or to charge.

N. B.—A particular description must be entered. If all or any of the debtor's property has been conveyed by deed of assignment or otherwise for the benefit of creditors the date of such deed should be stated, the name and address of the person to whom the property was conveyed, the amount realized from the proceeds thereof, and the disposal of the same, so far as known to the petitioner.

E.—Property heretofore conveyed for benefit of creditors.	Supposed value. Dollars.	Cents.
None.....		

STEPHEN T. WYGANT.

69 U. S. bankrupt act, March 2, 1867.—Secs. 11, 36, 39, 43.

Philp & Solomons, Government stationers, Washington, D. C.

(As approved.)

SCHEDULE B.—5.—(Inventory.)

In the Matter of STEPHEN T. WYGANT, Bankrupt.

A Particular Statement of the Property Claimed as Excepted

From the operation of said act by the provisions of the 14th section thereof, giving each item of property and its valuation, and, if any portion of it is real estate, its location, description, and present use.

A.—Property claimed to be excepted & which may be set apart by assignee under the 14 sec.	Valuation. Dollars.	Cents.
1 gold watch	50	00
1 gold ring.....	3	00
1 gold seal ring.....	5	00
Ordinary wearing apparel worth about.....	100	00

STEPHEN T. WYGANT.

70 U. S. bankrupt act, March 2, 1867.—Secs. 11, 36, 39, 43.

Philp & Solomons, Government stationers, Washington, D. C.

(As approved.)

SCHEDULE B.—5.—(Inventory.)

In the Matter of STEPHEN T. WYGANT, Bankrupt.

A Particular Statement of the Property Claimed as Excepted

From the operation of said act by the provisions of the 14th section thereof, giving each item of property and its valuation, and, if any portion of it is real estate, its location, description, and present use.

B.—Property claimed to be exempt by State laws and under what State law exemption is claimed.	Valuation.	
	Dollars.	Cents.
None excepting that set out in Schedule B—5—A .		

STEPHEN T. WYGANT.

71 U. S. bankrupt act, March 2, 1867.—Secs. 11, 36, 39, 43.

Philp & Solomons, Government stationers, Washington, D. C.

(As approved.)

SCHEDULE B.—6.—(Inventory.)

In the Matter of STEPHEN T. WYGANT, Bankrupt.

A True List of all Books, Papers, Deeds, and Writings

Relating to — trade, business, dealings, estate, and effects, or any part thereof, which, at the date of this petition, are in — possession or under — custody and control or which are in the possession or custody of —— —— in trust for — or for — use, benefit, or advantage, and also of all others which have been heretofore, at any time, in — possession or under — custody or control, and which are now held by the parties whose names are hereinafter set forth, with the reason for their custody of the same.

A.—Books.

One account book.

STEPHEN T. WYGANT.

72 U. S. bankrupt act, March 2, 1867.—Secs. 11, 36, 39, 43.

Philp & Solomons, Government stationers, Washington, D. C.

(As approved.)

SCHEDULE B.—6.—(Inventory.)

In the Matter of —— ——, Bankrupt.

A True List of all Books, Papers, Deeds, and Writings

Relating to — trade, business, dealings, estate, and effects, or any part thereof, which, at the date of this petition, are in — possession or under — custody and control or which are in the possession or custody of —— —— in trust for — or for — use, benefit, or advantage, and also of all others which have been heretofore, at any time, in — possession or under — custody or control, and which are now held by the parties whose names are hereinafter set forth, with the reason for their custody of the same.

B.—Deeds.

Deeds of premises in New Jersey and Illinois heretofore set forth.

STEPHEN T. WYGANT.

73 U. S. bankrupt act, March 2, 1867.—Secs. 11, 36, 39, 43.

Philp & Solomons, Government stationers, Washington, D. C.

(As approved.)

SCHEDULE B.—6.—(Inventory.)

In the Matter of STEPHEN T. WYGANT, Bankrupt.

A True List of all Books, Papers, Deeds, and Writings

Relating to — trade, business, dealings, estate, and effects, or any part thereof, which, at the date of this petition, are in — possession or under — custody and control or which are in the possession or custody of —— —— in trust for — or for — use, benefit, or advantage, and also of all others which have been heretofore, at any time, in — possession or under — custody or control, and which are now held by the parties whose names are hereinafter set forth, with the reason for their custody of the same.

C.—Papers, &c.

None.

STEPHEN T. WYGANT.

74 (As approved.)

Oath to Schedule B.—(Inventory.)

UNITED STATES OF AMERICA, *Southern District of New York,* } ss:

On this 28th day of March, A. D. 1871, before me personally came Stephen T. Wygant, the person mentioned in and who subscribed to the foregoing petition and to the schedule marked B, thereto annexed, and who, being by me first duly sworn, did declare the said schedule, as composed of twenty-six sheets of paper respectively indicated thus: B 1, B 2 *a*, B 2 *b*, B 2 *c*, B 2 *d*, B 2 *e*, B 2 *f*, B 2 *g*, B 2 L, B 2 *i*, B 2 *k*, B 2 *l*, B 3 *a*, B 3 *b*, B 3 *c*, B 3 *d*, B 4 *a*, B 4 *b*, B 4 *c*, B 4 *d*, B 4 *e*, *xx* B 5 *a*, B 5 *b*, B 6 *a*, B 6 *b*, B 6 *c*, to be a true statement of all his estate, both real and personal, describing the same and stating where it is situated, and whether there are any and, if so, what incumbrances thereon, in accordance with the Revised Statute- of the United States, title "Bankruptcy," and the acts amending the same.

HENRY WILDER ALLEN,
Register in Bankruptcy.

Entered according to act of Congress, in the year 1867, — Philp & Solomons, in the clerk's office of the supreme court of the District of Columbia.

75 EXHIBIT "D."

Filed May 28, 1867.

UNITED STATES OF AMERICA, *Southern District of New York,* } ss:

I, Samuel H. Lyman, clerk of the district court of the United States of America for the southern district of New York, do hereby certify that the writings annexed to this certificate have been compared by me with their originals on file and remaining of record in my office; that they are correct transcripts therefrom and of the whole of the said originals.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, this 24th day of March, in the year of our Lord one thousand eight hundred and eighty-seven, and of the Independence of the said United States the one hundred and eleventh.

SAM'L H. LYMAN, *Clerk.*

In the District Court of the United States for the Southern District of New York.

In the Matter of STEPHEN T. WYGANT, Bankrupt. In Bankruptcy. No. 6192.

At No. 152 Broadway, in the city of New York, in said district, on the 20th day of March, A. D. 1878, before me, Henry Wilder Allen, register in bankruptcy.

76 SOUTHERN DISTRICT OF NEW YORK, *ss:*

The following is a list of creditors who have this day proved their debts:

Names of creditors.	Residence.	Debts proved.
		Dolls. Cts.
George F. Falman..	No. 30 West 34th St., New York city.	6,316 73
Matilda Peirce.....	No. 257 West 14th St., New York city.	4,876 76
Edwin Wygant....	No. 68 Dey St., New York city.	1,879 35

HENRY WILDER ALLEN,
Register in Bankruptcy.

In the District Court of the United States for the Southern District of New York.

In the Matter of STEPHEN T. WYGANT, Bankrupt. In Bankruptcy. No. 6192.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

To Henry T. Godet, Esquire, of the city of New York, in the county of New York and State of New York:

I do hereby certify to you that you were duly chosen assignee of the estate and effects of the above-named bankrupt at the first meeting of creditors on the 20th day of March, A. D. 1878, and I do hereby approve and confirm said election, and I do further certify that the greater part in value and in number of the creditors of said bankrupt who had proved their claims were present or were
77 duly represented at said meeting.

Dated at New York the 20th day of March, A. D. 1878.

HENRY WILDER ALLEN,
Register in Bankruptcy.

Form No. 58.

Adjudication of Bankruptcy.

(Creditors' petition.)

In the District Court of the United States for the Southern District of New York.

In the Matter of STEPHEN T. WYGANT, Bankrupt. In Bankruptcy. No. 6192.

At the city of New York, in said district, 23d day of February, A. D. 1878.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

This cause came on to be heard at the city of New York in said court and on reading and filing proof of due service of a copy of the creditors' petitioner herein and order to show cause on Stephen T. Wygant, the bankrupt above named, more than five days before the return day of the said order to show cause, and Ely and Smith, Esquires, appearing on behalf of the petitioning creditors and no one appearing in opposition, the said bankrupt, Stephen T. Wygant, being called in open court, came not, but made default to appear pursuant to said order to show cause.

And thereupon and upon consideration of the proofs in said cause it was found that the facts set forth in said petition were true, and it is therefore adjudged that Stephen T. Wygant became bankrupt within the true intent and meaning of the Revised Statutes
78 of the United States, title "Bankruptcy," before the filing of the said petition, and he is therefore declared and adjudged a bankrupt accordingly.

And it is further ordered that the said bankrupt shall within five days after the date of this order make and deliver or transmit by mail, postpaid, to the marshal, as messenger, a schedule of his creditors and an inventory of his estate in the form and verified in the manner required of the petitioning debtor by the said Revised Statutes.

And it is further ordered that the above-entitled case be referred to Henry Wilder Allen, Esquire, one of the registers in bankruptcy of this court, to take such proceedings thereon as are required by the said Revised Statutes.

Witness the Honorable Samuel Blatchford, judge of the said court, and the seal thereof, at New York, in said district, on the 23d day of February, A. D. 1878.

[Seal of the Court.]

GEO. F. BETTS,
Clerk of the District Court for said District.

S. C. W.
Enter.
S. B.

In the District Court of the United States for the Southern District of New York.

In the Matter of STEPHEN T. WYGANT, Bankrupt. In Bankruptcy. No. 6192.

At No. 152 Broadway, in the city of New York, in said district, on the 20th day of Nov., A. D. 1878, before me, Henry Wilder Allen, register in bankruptcy.

79 SOUTHERN DISTRICT OF NEW YORK, *ss:*

I hereby certify that the following is a list of creditors who have proved their debts in the above-entitled matter:

Names of creditors.	Residence.	Debts proved.	
		Dolls.	Cts.
George F. Fallman....	No. 30 West 34th St., New York city.....	6,316	73
Matilda Peirce.....	No. 257 West 14 St., New York city.....	4,876	76
Edwin Wygant	No. 68 Dey St., New York city.....	1,879	35
The mayor, aldermen, and commonalty of the city of New York.	City hall, New York city	132	50

Witness my hand at the time and place above written.

HENRY WILDER ALLEN,
Register in Bankruptcy.

At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Tuesday, the 15th day of October, in the year of our Lord one thousand eight hundred and seventy-eight.

Present: The Hon. William G. Choate, district judge.

In the Matter of STEPHEN T. WYGANT, Bankrupt. In Bankruptcy. No. 6192.

On reading and filing the petition of Stephen T. Wygant for a discharge from all his debts provable under the act of Con-
80 gress entitled "An act to establish a uniform system of bankruptcy throughout the United States, approved March 2, 1867," and for a certificate thereof, it is ordered that it be referred to Henry Wilder Allen, the register in bankruptcy in charge of the above matter, to make an order to show cause thereon and to sit in chambers on the return of said order and to pass the last examination of the bankrupt if there be no opposition.

And it is further ordered that the said register certify to this court whether the said bankrupt has in all things conformed to his duty

under the said act and has conformed to all the requirements of the said act.

WILLIAM G. CHOATE,
District Judge.

I, Samuel H. Lyman, clerk of the district court of the United States for the southern district of New York, do hereby certify that the above is a true copy of an order made in the above-entitled matter.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, this 15th day of October, in the year of our Lord one thousand eight hundred and seventy-eight, and of the Independence of the said United States the one hundred and third.

SAM'L H. LYMAN, *Clerk.*

81 Form No. 51.

Petition for Discharge.

In the Matter of STEPHEN T. WYGANT, Bankrupt. In Bankruptcy.

To the Hon. William G. Choate, judge of the district court of the United States for the southern district of New York:

Stephen T. Wygant, of the city of New York, in the county of New York and State of New York, in said district, respectfully represent- that on the 23d day of February last past he was duly declared a bankrupt under the act of Congress in that case made and provided; that he hath duly surrendered all his property and rights of property and fully complied with and obeyed all the orders and directions of the court touching his bankruptcy and is ready to submit himself to any other and further examinations, orders, and directions which the court may require.

Whereupon he prays that he may be decreed by the court to have a full discharge from all his debts provable under said bankrupt act and a certificate thereof granted according to the said act of Congress.

Dated this 15th day of October, A. D. 1878.

STEPHEN T. WYGANT, *Bankrupt.*

82 *Motion.*

Filed April 11, 1890.

In the Supreme Court of the District of Columbia.

BROWN *vs.* WYGANT, Ex'c'x, &c. } In Equity. No. 10666.

And now comes the complainant, by Robert Christy, his solicitor, and moves the court for an order limiting the time within which

the defendant, Grace Wygant, executrix, &c., shall be required to take the testimony of witnesses on her behalf in this cause.

ROBERT CHRISTY,
Solicitor for Complainant.

Order Limiting Defendant in Taking Testimony.

Filed April 15, 1890.

In the Supreme Court of the District of Columbia.

BROWN *vs.* WYGANT. } Equity. No. 10666.

The complainant having concluded the taking of his testimony, it is this 5th day of April, 1890, ordered that the defendant be limited to 30 days from this date to take his testimony.

W. S. COX, *J.*

83 *Motion for Extension of Time.*

Filed May 15, 1890.

In the Supreme Court of the District of Columbia.

BROWN *vs.* WYGANT. } Equity. No. 10666. Docket 27.

The defendant moves for an extension of time to take testimony in the above-entitled cause.

CHAS. H. ARMES,
Sol. for Defendant.

Charles H. Armes, being duly sworn, says he is the solicitor for the defendant in the above-entitled cause; that upon the same day the order of this court was made limiting the time for taking testimony on defendant's part he wrote to an attorney in New York city—one E. A. S. Man, 62 William street—who has been a legal adviser of the defendant, informing him of the above order and asking for the address of the defendant, and within about 10 days thereafter affiant also wrote to the former address of the defendant informing her of said order; that affiant did not know the present address of the defendant, and that he did not hear from either of said parties until yesterday, May 14, and then learned from said E. A. S. Man, Esq., that the defendant "has been laid up sick for some weeks past and is still under doctor's care." Affiant believes the same to be true; and he further says that the above is the only reason why he has delayed the matter of the defendant's testimony since said order was made.

CHARLES H. ARMES.

Subscribed & sworn to before me this 15th of May, 1890.

R. J. MEIGS, *Clerk*,
By L. P. WILLIAMS,
Ass't Clerk.

84 To Robert Christy, Esq., plaintiff's solicitor:

Please take notice that on Saturday next, 17th May, instant, I will call up the above motion upon said affidavit.

May 15, 1890.

C. H. ARMES,
Sol. for Defendant.

Entry in Order Book 11, *Page* 148.

BROWN
vs.
WYGANT, Executrix, *et al.* } 10666.

The clerk will please calendar this cause for the July term.

ROBERT CHRISTY,
Sol. for Complainant.

June 18th, 1890.

Calendared as ordered.
'90, 6, 18.

BY THE CLERK.

Petition of Henry Leeds, Assignee.

Filed July 16, 1890.

In the Supreme Court of the District of Columbia.

JOSEPH M. BROWN
against
GRACE WYGANT, Executrix of the Will of Stephen T. Wygant, Deceased. } In Equity. No. 10666, Docket 27.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

To the honorable justice holding an equity court for said court:

1. The petition of Henry Leeds respectfully represents
85 that on the 9th day of February, 1874, one Thomas L. Raymond obtained a judgment on the law side of your honorable court against the plaintiff in the above-entitled cause for the sum of $5,000.00, and on the 14th day of May, 1874, said judgment was duly assigned upon the records of said court to the late Stephen T. Wygant, which said judgment has never been paid.

2. He further says that in the year 1883 said Stephen T. Wygant departed this life; and thereafter, to wit, in the year 1886, said judgment having nearly expired by limitation of law, your petitioner is informed and believes, the defendant, Grace Wygant, as executrix of said Stephen T. Wygant, instituted the necessary legal proceedings

to revive and keep alive said judgment and have the same entered in her name as executrix, and the said proceedings were prosecuted until the necessary judgment to continue the same in existence was obtained, and said judgment is still of record in your honorable court and is still of force and effect.

3. Thereafter, to wit, on the 22nd day of June, 1887, the said Joseph M. Brown filed his bill of complaint in this cause, praying for an injunction to prevent the said executrix from proceeding to enforce the payment of said judgment, alleging as ground therefor that said Stephen T. Wygant had in his lifetime and while he owned said judgment been adjudged a bankrupt by the district court of the United States for the southern district of New York, and that by virtue of the proceedings in said bankruptcy suit the legal title to said judgment had become vested in one Henry T. Godet, as assignee in bankruptcy therein, and that the said executrix had no title thereto. Thereupon and thereafter it was ordered by the court that said Henry T. Godet, assignee, be made a party to said suit; whereupon said bill was amended and said Godet was named as a
86 party defendant; but the said Godet, on or about the 5th day of September, 1888, died in the city of New York, and never appeared in said suit, as your petitioner is informed and believes.

4. Your petitioner further shows that he was on the 17th day of June, 1890, appointed in the place and stead of said Henry T. Godet as assignee of said bankrupts, Stephen T. Wygant, by said district court, as will appear by a copy of the order of appointment, duly certified under the seal of said court, herewith filed and made a part hereof.

5. Your petitioner further shows that several claims of creditors, including a claim of the city of New York, were proved in said bankruptcy suit, none of which have been satisfied, and your petitioner is powerless to enforce payment of said judgment under the bankruptcy law, if compelled to proceed as assignee, by reason of the lapse of time; but in order that the proceeds of said judgment against said Brown may be applied to the payment of said claims your petitioner desires to become a party to said suit and to ratify and consent to the proceedings of said Grace Wygant, executrix, in reviving said judgment.

6. And your petitioner, as assignee as aforesaid, does hereby ratify, approve, and assent to the proceedings of the said Grace Wygant, executrix, &c., mentioned in the bill of complaint herein, and says that he is advised that it is within the power and jurisdiction of your honorable court to decree that said Grace Wygant do hold such proceeds of said judgment as have or may come to her hands as a trustee for the benefit or your petitioner and may be required to pay the same to him, or that said court may order that said Brown pay into court the amount of said judgment, and your petitioner is advised that your honorable court has full jurisdiction to do justice in the premises and secure the proceeds of said judgment to said creditors.

87 Your petitioner further says that he is informed and believes, and so avers, that said judgment against said Brown

has not now and never has had any marketable value in money, but that said Brown has an income of many thousands of dollars as an officer of the Bell Telephone Company, and your petitioner believes that it will eventually be practicable to realize on said judgment.

Wherefore your petitioner prays that he may be made a party to said cause, or that he may have notice of the proceedings therein, and that the plaintiff may be required to pay into court, subject to the order of the court, any money that may be applicable to the payment of said judgment.

And your petitioner prays for such other or further relief in the premises as the court may deem necessary and proper.

HENRY LEEDS, *Assignee.*

Subscribed and sworn to this 24th day of June, A. D. 1890, at the city of New York, in said district, before me—

HENRY LEEDS.

[SEAL.] SIDNEY DE KAY,
United States Commissioner, South. Dist. of New York.

In the District Court of the United States for the Southern District of New York.

In the Matter of STEPHEN T. WYGANT, Bankrupt. In Bankruptcy.

At the city of New York on the 17th day of June, 1890.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

88 Whereas Matilda Peirce, one of the creditors of the above-named bankrupt and who has proved her claim against his estate, did on the 17th day of June, 1890, present her petition to this court stating as therein set forth, among other things, that Henry T. Godet, the assignee elected at the first meeting of the creditors of said bankrupt, died on the 5th day of September, 1888, without having filed his accounts or been discharged as assignee, and that he had received no assets of said bankrupt's estate, and that it was necessary that another assignee be appointed in his place, suggesting Henry Leeds, of New York city, as a person to be appointed, and that two of the other creditors who had proved their claims, Edwin Wygant and George T. Talman, the petitioning creditors, had died, and that their estates had been settled up and their executors discharged, and that the only other creditor besides said petitioner is the mayor and commonalty of the city of New York, who proved and filed a claim for $132.50, and that said bankrupt is dead—

It is ordered that Henry Leeds, of the city of New York, in the district aforesaid, be, and he is hereby, appointed assignee in bankruptcy of the said bankrupt, Stephen T. Wygant, in the place and stead of the said Henry T. Godet, deceased, the original assignee,

elected at the first meeting of creditors of said bankrupt and with like powers.

(Signed) ADDISON BROWN.

Attest: SAM'L H. LYMAN, *Clerk.*

A true copy.
[SEAL.]

SAM'L H. LYMAN, *Clerk.*

89 *Motion to Strike Petition of Henry Leeds from the Files.*

Filed September 2, 1890.

In the Supreme Court of the District of Columbia.

JOSEPH M. BROWN *against* GRACE WYGANT, Executrix, &c., of Stephen T. Wygant, Deceased.	In Equity. No. 10666, Docket 27.

And now comes the complainant and moves the court for an order striking the petition of Henry Leeds, assignee, &c., filed herein on the 16th day of July, A. D. 1890, from the files, and dismissing such petition for the reasons following, to wit:

First. Said Henry Leeds, assignee, &c., is not a necessary party to this suit.

Second. Said Henry Leeds, assignee, &c., is not a proper party to this suit.

Third. The predecessor of the said Henry Leeds, as assignee of the bankrupt estate of the late Stephen T. Wygant, deceased, to wit, Henry T. Godet, deceased, had actual knowledge of the pendency of this suit, disclaimed all interest therein, and neglected — refused to become party thereto.

Fourth. Because said Henry Leeds, assignee, &c., and the said Henry T. Godet, assignee, &c., in his lifetime allowed testimony to be taken in said cause and the same to be fully referred and set down for hearing without entering an appearance therein or in any manner submitting to the jurisdiction of the court in respect thereto.

Fifth. Because said petition was filed without leave of the court and under a collusive arrangement with the original defend-
90 ant, Grace Wygant, executrix, &c.

Sixth. And for other good and sufficient reasons to be assigned at the hearing of this motion.

ROBERT CHRISTY,
Solicitor for Complainant.

Order Limiting Time to 20 Days to Take Testimony.

Filed September 29, 1890.

In the Supreme Court of the District of Columbia.

JOSEPH M. BROWN
vs.
GRACE WYGANT, EX. } No. 10666.

Ordered this 29th day of September, 1890, that the defendant have twenty days from this day to take and conclude testimony in her behalf.

By the court:

W. S. COX, *J.*

Order Admitting Assignee as Party Def't.

Filed October 7, 1890.

In the Supreme Court of the District of Columbia.

JOSEPH M. BROWN
vs.
GRACE WYGANT, Executrix. } No. 10666, Eq. Doc. 27.

Upon consideration of the motion to strike from the files the petition of Henry Leeds, assignee, &c., said motion is overruled
91 and denied, and upon consideration of the petition of said Henry Leeds to be made a party defendant, such petition being considered solely with reference to such application, it is this 7th day of October, 1890, ordered that said Leeds be and he is admitted as a party defendant, the testimony and orders heretofore taken and passed in the cause to stand, and said Henry Leeds, assignee, &c., is permitted to answer the bill within 30 days from this day.

By the court:

A. C. BRADLEY, *Justice.*

Answer of Defendant Henry Leeds, Assignee.

Filed November 4, 1890.

In the Supreme Court of the District of Columbia.

JOSEPH M. BROWN, Complainant,
vs.
GRACE WYGANT, Executrix, &c., and HENRY LEEDS, Defendants.
No. 10666. Equity.

The separate answer of the defendant Henry Leeds, assignee in bankruptcy of Stephen T. Wygant, deceased, to the amended bill of complaint of the above-named complainant.

In answer to so much of the bill of complaint as this defendant is advised it is material for him to answer, this defendant says:

He admits that on the 9th day of February, 1878, a judgment was obtained in this court against the plaintiff for $5,000, and that the same was duly assigned by the plaintiff therein to said Stephen T. Wygant as alleged.

He admits that on the 23d day of February, 1878, said Wygant was duly adjudged a bankrupt and duly surren-
92 dered his property, including said judgment as alleged; that one Henry T. Godet was duly appointed and qualified as assignee of said bankrupt as alleged, and that all the assets of said Wygant passed by operation of law to said assignee; that said estate has never been settled and that claims in excess of the value of the assets were proved.

This defendant, further answering, says that said Henry T. Godet died on, to wit, the fifth day of September, 1888; and afterward, and by due proceedings had in the district court of the United States for the southern district of New York, this defendant was appointed assignee in his place and stead, and he is advised that as such assignee he is entitled to the said judgment, and that the said complainant has no equity to defeat him in the collection thereof.

This defendant, further answering, says he does not know whether the defendant Grace Wygant was aware of the bankruptcy proceedings aforesaid or not, nor has he any knowledge as to the truth of the averments of said bill as to her purpose in prosecuting the proceedings in the probate court as set forth herein; but, whatever the purpose of such proceedings may have been, this defendant says he is advised that the effect thereof, together with the subsequent proceedings in the circuit court which resulted in reviving and keeping alive said judgment as set forth in said bill, has been and is to establish a title in said Grace Wygant, executrix as aforesaid, for which she is accountable only to this defendant, assignee as aforesaid.

This defendant has no knowledge of any wrong, irregularity, or mistake in the proceedings to revive said judgment mentioned in the bill of complaint, but upon information and belief he avers

that the same were in all respects legal and sufficient, and he is willing that the same shall stand and be confirmed, hereby
93 expressly ratifying and confirming, so far as he has power, all that said Grace Wygant, executrix as aforesaid, has done in the premises, this defendant being advised that she holds said judgment as trustee on his behalf.

And now, having fully answered said bill of complaint or so much thereof as he is advised it is necessary for him to answer, this defendant prays to be hence dismissed with his costs.

HENRY LEEDS.

STATE OF NEW YORK, }
City of New York, } *ss:*

I, Henry Leeds, on oath say that I have read the foregoing answer by me subscribed and know the contents thereof; that the facts therein stated of my own knowledge are true and those stated on information and belief I believe to be true.

HENRY LEEDS.

Sworn to before me this first day of November, 1890.

[SEAL.] JAS. W. HALE,
Public Notary, 4 Hanover Street.

Replication of Complainant to Answer of Henry Leeds.

Filed November 10, 1890.

In the Supreme Court of the District of Columbia.

JOS. M. BROWN
vs.
GRACE WYGANT, Executrix, &c., *et al.* } In Equity. No. 10666.

The complainant hereby joins issue with the defendant Henry Leeds, assignee, on his answer heretofore filed herein.

ROBERT CHRISTY,
Solicitor for Complainant.

94 *Leave to Henry Leeds, Assignee, to File Cross-bill.*

Filed November 10, 1890.

In the Supreme Court of the District of Columbia.

JOSEPH M. BROWN
vs.
GRACE WYGANT, Executrix, and HENRY LEEDS, Assignee, &c. } No. 10666, Eq. Doc.

Leave is hereby given the defendant Henry Leeds, assignee, to file forthwith a cross-bill in this cause against the complainant and said Grace Wygant, executrix, &c.

By the court:

CHARLES P. JAMES, *J.*

Cross-bill.

Filed November 10, 1890.

In the Supreme Court of the District of Columbia.

JOSEPH M. BROWN
vs.
GRACE WYGANT and HENRY LEEDS, Assignee, &c. } No. 10666. Equity.

To the supreme court of the District of Columbia:

The cross-bill of the above-named Henry Leeds, assignee in bankruptcy of Stephen T. Wygant, deceased, filed herein by leave of the court first had, shows as follows:

First. That he is a citizen of the United States, resides in the city of New York, and files this cross-bill as assignee in bankruptcy of the above-named Stephen T. Wygant, deceased,
95 against Joseph M. Brown and Grace Wygant, executrix. The cross-defendant Joseph M. Brown resides in the District of Columbia, as this cross-complainant believes, and is sued in his own right, and said Grace Wygant is sued as executrix of the last will and testament of said Stephen T. Wygant, deceased.

Second. That on or about the 9th day of February, 1874, one Thomas L. Raymond obtained a judgment against the said Joseph M. Brown, on the law side of this court, in cause numbered 11757, on the law docket, for the sum of $5,000 and costs of suit; and afterward, to wit, May 14, 1874, said judgment was duly assigned upon the records of said court to the aforenamed Stephen T. Wygant, now deceased, all of which will more fully and at large appear upon reference to the record of said cause, which this cross-complainant prays leave to read as part of this cross-bill.

Third. That afterward and on the 23d day of February, 1878, the said Stephen T. Wygant was duly adjudged a bankrupt by the judgment and decree of the district court of the United States for the southern district of New York, and after regular proceedings under their existing bankruptcy laws one Henry T. Godet was duly appointed assignee of the said bankrupt and qualified as such, and the title of said bankrupt to said judgment against said Joseph M. Brown became and was vested in said Godet as such assignee, but no memorandum of such assignment has ever been noted on the record of said cause.

Fourth. That debts of the said Stephen T. Wygant aggregating more than five thousand dollars were duly found in said bankruptcy proceeding, but no part thereof was paid, and said bankrupt was never discharged, and no settlement of account was made by said Godet or by any person as assignee in said cause, and there are not sufficient assets without said judgment to pay said creditors'
96 claims or any part thereof; and this cross-complainant further says that said Henry T. Godet died on or about the fifth

day of September, 1888, at the city of New York; and thereafter, to wit, on the 17th day of June, 1890, this cross-complainant was appointed by the district court aforesaid assignee of the said Stephen T. Wygant in the place and stead of the said Godet, deceased, and duly qualified as such, and complainant prays leave to refer to a copy of the order appointing him such assignee, attached to his petition to be made a party to this cause.

Fifth. That the above-named Stephen T. Wygant died testate, to wit, about the year 1883 and after said judgment had passed to his assignee as aforesaid, and -hereafter, to wit, on the 12th day of January, 1886, said Grace Wygant obtained letters testamentary upon his estate from the supreme court of the District of Columbia by due and regular proceedings for that purpose, as will fully appear upon reference had to the record thereof, which is prayed to be read as part hereof.

Sixth. That after said Grace Wygant was appointed executrix as aforesaid, to wit, on the 1st day of February, 1886, a suggestion of the death of said Stephen T. Wygant was duly made to this court sitting as a circuit court and the same was duly entered of record in said cause No. 11757, and said executrix was made party to said cause in the place of her said testator, and she thereafter instituted such proceedings in said circuit court as were necessary and proper for the purpose of reviving and keeping in force said judgment against said Joseph M. Brown and prosecuted the same until, to wit, the 3d day of March, 1886, when said judgment was duly revived by the issue of a "fiat" in said cause, and said judgment is still in force and is wholly unpaid and appears by the
97 record in said cause to be payable to said executrix; all of which will fully appear upon reference had to the record of said cause, which this cross-complainant prays may be read as part of this bill.

Seventh. That afterward, to wit, on the 22 day of January, 1887, and after said judgment would have been barred by the statute of limitations but for said proceedings of revivor by said executrix, the said Joseph M. Brown filed his original bill in this cause against the said Grace Wygant, as executrix of said Stephen T. Wygant, deceased, to restrain the said executrix from enforcing said judgment, alleging, among other things, as cause therefor that the right to said judgment was not vested in said executrix by her appointment to said office, but was vested in said Henry T. Godet, assignee as aforesaid.

And afterward and on the 16th day of July, 1890, this cross-complainant filed his petition for leave to appear and answer as a defendant to said bill of complaint, and *said* proceedings were had that on the 7th day of October, 1890, an order was passed admitting him as a defendant to said cause, and on, to wit, the 4th day of November, 1890, he filed his answer to the said bill; all of which will fully appear upon reference had to the records in this cause.

Eighth. This cross-complainant is advised and believes, and so believing avers, that as assignee in bankruptcy of said Stephen T. Wygant, deceased, he *he* is equitably entitled to hold, possess, and

collect said judgment against said Joseph M. Brown, so revived in favor of said Grace Wygant, executrix, as an asset of said bankrupt's estate; that his right to the same should be established, and that said Grace Wygant should be required to assign the same to him, so that his title shall appear of record.

98 The premises considered, and forasmuch as this cross-complainant has no remedy save in this honorable court, where such matters are properly cognizable, he prays as follows:

Prayers.

1. That said Joseph M. Brown and Grace Wygant, executrix of Stephen T. Wygant, deceased, be made parties to this cross-bill, and that process may issue requiring them severally to appear and answer the same.

2. That said judgment, as the same is revived in the name of said Grace Wygant, executrix, &c., may be decreed to be the property of this cross-complainant, Henry Leeds, as assignee in bankruptcy of the said Stephen T. Wygant, deceased, and an asset of said bankrupt's estate and of full force and vigor as against said Joseph M. Brown.

3. That said Grace Wygant, executrix as aforesaid, may be decreed to convey and assign said judgment and all her apparent rights therein to this complainant, so that he may have full benefit thereof; and,

4. That complainant may have such other and further relief as the nature of the case may require and the court has power to grant.

HENRY LEEDS.

A. A. BIRNEY,
Sol'r for Cross-compl't.

The defendants to this cross-bill are Grace Wygant, executrix of Stephen T. Wygant, deceased, and Joseph M. Brown.

STATE OF NEW YORK, } ss.:
City of New York, }

99 I, Henry Leeds, on oath say that I have read the foregoing cross-bill by me subscribed and know the contents thereof; that those facts stated on my own knowledge are true and those stated on information and belief I believe to be true.

HENRY LEEDS.

Sworn to before me this seventh day of November, 1890.

[SEAL.] JAS. W. HALE,
Public Notary, 4 Hanover St.

Answer of Complainant to the Cross-bill.

Filed November 25, 1890.

In the Supreme Court of the District of Columbia.

JOSEPH M. BROWN
vs.
GRACE WYGANT, Executrix, &c., *et al.* } In Equity. No. 10666.

Answer of complainant to the cross-bill of defendant Henry Leeds, assignee in bankruptcy, &c.

The plaintiff, now and at all times hereafter saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said defendant's cross-bill contained, for answer thereunto or unto so much or such parts thereof as the plaintiff is advised is or are material or necessary for him to make answer unto, the plaintiff, answering, saith:

First. He admits all and singular the averments contained in the paragraphs in said cross-bill numbered respectively "1," "2," "3," and "4."

Second. In answer to the averments contained in the fifth paragraph of said cross-bill, plaintiff says that he admits the
100 averments therein upon information and belief that the Stephen T. Wygant mentioned therein died intestate after the judgment mentioned likewise therein had passed to his assignee in bankruptcy; that the said Grace Wygant, one of the defendants in this cause, at the time mentioned in said paragraph obtained letters testamentary upon the estate of the said Stephen T. Wygant from the supreme court of the District of Columbia, but plaintiff denies upon information, knowledge, and belief that such letters testamentary were obtained upon due and regular proceedings, but, upon the contrary, avers upon like information, knowledge, and belief that the said supreme court of the District of Columbia was without lawful jurisdiction in the premises.

Third. In answer to the averments contained in the sixth paragraph of said cross-bill, plaintiff says true it is that the said Grace Wygant was appointed executrix as in said paragraph averred, and that a suggestion of the death of the said Stephen T. Wygant was made to the supreme court of the District of Columbia, sitting as a circuit court, and that the same was entered of record in said cause, numbered 11757, and that said executrix was made party to said cause in the place of the said testator, thereafter instituting — proceedings in said circuit court as were necessary and proper for the purpose of reviving and keeping in force said judgment, prosecuting the same until said judgment was revived by the issue of a "fiat," all likewise averred in said paragraph of said cross-bill; but this plaintiff upon information, knowledge, and belief charges that

said executrix at the time such suggestion of death was made had no interest whatever in said judgment nor at any time since, and the order of the said circuit court making said executrix a party
101 to said cause numbered 11757 was without any authority of law, and the proceedings thereafter instituted by said executrix and by her conducted for the purpose of reviving and keeping in force said judgment were likewise without authority of law and the said "fiat" issued in respect thereto void and of no legal effect in law, though apparently regular upon its face.

As to the averments in said paragraph sixth that said judgment is still in force and is wholly unpaid, plaintiff, answering, says that said judgment in said cross-bill mentioned was rendered on the ninth day of February, A. D. 1874, in favor of one Thomas L. Raymond; that said Raymond thereafter, as appears from the records of said circuit court, assigned and transferred his interest in said judgment to the said Stephen T. Wygant on, to wit, May fourteenth, A. D. 1874; that no proceedings were had or attempted to be had thereafter to enforce said judgment or to revive the same until the unlawful attempts of the said Grace Wygant hereinbefore mentioned; that the said Stephen T. Wygant, after the assignment and transfer of the judgment to him as aforesaid, was regularly adjudicated a bankrupt by the district court of the United States for the southern district of New York on, to wit, the eleventh day of February, A. D. 1878; that said judgment was mentioned in the schedule of assets filed in said bankruptcy proceedings by the said Stephen T. Wygant and passed by operation of law and the assignment in writing of the said Stephen T. Wygant to his assignee in bankruptcy, Henry T. Godet, now deceased, the predecessor of the said Henry Leeds, one of the defendants in this cause.

Plaintiff for further answer says that no notice was ever given to him of the assignment and transfer of the said judgment by the said Raymond to the said Wygant nor of the attempt to revive said judgment by the said executrix, notwithstanding he was at the time of such assignment and transfer and such proceed-
102 ings to revive and attempts to revive such judgment a resident of and within the city of Washington, in said District of Columbia, and could have been personally served with the process of said circuit court.

In further answer to said charge in said paragraph contained, that said judgment is still in force and is wholly unpaid, plaintiff says he is advised by counsel learned in the law that said judgment, by reason of the premises, is and was at the time of the filing of the bill of complaint in this cause and the filing of the cross-bill herein barred by the statutes of limitations in force within the said District of Columbia, and that said judgment was and is not good or pleadable or admissible in evidence in said supreme court of the District of Columbia. Plaintiff claims and pleads said statute of limitations and relies upon the same, and prays the protection of the court fully in respect thereto, no lawful proceedings having been brought or attempted to be brought to revive such judgment or to enforce the same by any person whatsoever, nor by the said Henry Leeds,

assignee aforesaid, nor by the said Stephen T. Wygant in his lifetime, nor by the said Godet, assignee as aforesaid, until after said judgment was of more than twelve years' standing.

Fourth. In answer to the seventh paragraph of said cross-bill, plaintiff says that true it is that said "judgment would have been barred by the statute of limitations but for said proceedings of revivor by said executrix," but plaintiff submits that said executrix had no lawful right or authority, for the reasons hereinbefore mentioned, to interfere with said judgment, being a stranger thereto and without any legal or equitable right or interest therein, and
103 that the said Henry Leeds has acquired no rights in respect to said judgment or against this plaintiff by reason of such unlawful and unauthorized acts of said executrix, nor can he acquire any rights through or under the acts of said executrix aforesaid.

Plaintiff, for further answer to said paragraph seven, upon knowledge and information admits the remaining averments therein to be true.

Fifth. Plaintiff, in answer to the averments in the eighth paragraph of said cross-bill contained, says that he is advised by counsel that he is not required to answer the same, they being all and singular in form conclusions of law; yet he says that he denies that the said cross-complainant is equitably entitled to hold, possess, and collect said judgment by reason of any of the acts of the said executrix in respect thereto, and denies that any lawful revivor of said judgment has ever been made.

Plaintiff, for further answer to said paragraph eighth, says that the said Henry T. Godet had full, actual notice of the pendency of this suit in his lifetime whilst acting as such assignee, but refused and neglected to become a party thereto or in any manner to submit to the jurisdiction of this honorable court touching said judgment.

Plaintiff, for further answer, prays that the several exhibits filed with his original and amended bill of complaint may be read and considered as often as may be necessary in connection with this answer, and likewise that his original and amended bills of complaint may be refer-ed to when necessary.

Plaintiff likewise prays that he may have the same benefit and advantage as if he had demurred to said cross-bill instead of answering the same, and that this his answer may be considered
104 and treated, so far as the principles and usages of a court of equity may permit, as a demurrer to said cross-bill.

Whereupon he prays that said cross-bill may be dismissed, and that he may recover his reasonable costs in this behalf most unreasonably sustained.

JOSEPH M. BROWN.

ROBERT CHRISTY,
Solicitor of Joseph M. Brown.

UNITED STATES OF AMERICA, } ss:
District of Columbia, }

I do solemnly swear that I have read the answer by me subscribed and know the contents thereof, and that the facts therein stated upon my personal knowledge are true and those stated upon information and belief I believe to be true.

JOSEPH M. BROWN.

Sworn to before me and signed in my presence this twenty-fourth day of November, 1890.

R. J. MEIGS, *Clerk,*
By M. A. CLANCY, *Ass't Clerk.*

Entry in Order Book 11, *Page* 182.

BROWN
vs. } Eq. No. 10666.
WYGANT, Executrix, &c., *et al.*

The clerk will enter the appearance of Joseph M. Brown to the cross-bill filed by defendant Henry Leeds, &c.; also my appearance as solicitor for said Brown.

ROBERT CHRISTY,
Sol. for Jos. M. Brown.

Appearance, as ordered, entered.
'90, 11, 25.

BY THE CLERK.

105 *Answer of Grace Wygant to Cross-bill.*

Filed January 14, 1891.

In the Supreme Court of the District of Columbia.

JOSEPH M. BROWN
vs.
GRACE WYGANT and HENRY LEEDS, Assignee, &c. } No. 10666. Equity.

The answer of Grace Wygant to the cross-bill of the above-named complainant.

To the supreme court of the District of Columbia:

1. She admits the allegations of paragraph one of said bill to be true.

2. She admits that a judgment was obtained and assigned as alleged in the second paragraph of said bill.

3. She admits that the facts alleged in the third paragraph of said bill are true; but says she was not aware, until after the filing of said original bill, that any person claimed that the title of said bankrupt to said judgment was vested in said Godet as such as-

signee or otherwise. Since then she has been so advised, but she denies that said proceedings had the legal effect claimed of investing said Godet with the title to said judgment.

4. She admits that debts of said Stephen T. Wygant were proved aggregating more than five thousand dollars ($5,000) in said proceeding, and that none of them and no part thereof were paid; but whether said bankrupt was or was not discharged, she has no knowledge except from hearsay. Up to the time the original bill was filed by Joseph M. Brown in the above-entitled cause,
106 she believed said bankruptcy proceedings had long theretofore been prosecuted to a close, and that the bankrupt was discharged, and that such interests of all and every nature as were vested in said assignee by virtue of said bankruptcy proceedings had been extinguished thereby in the course of law, and that upon the decease of said Stephen T. Wygant *and* she avers said title vested in her as his executrix, as she verily believes and has been advised.

5. She admits that the said Stephen T. Wygant died testate, as alleged, in the year 1883, and that she obtained letters testamentary, as alleged in the fifth paragraph of said cross-bill.

6. She admits the averments of the sixth paragraph of said cross-bill to be true.

7. She admits the facts alleged in the seventh paragraph of the cross-bill to be true.

8. This defendant, answering the eighth paragraph of the cross-bill, says that the claim therein contained rests upon a pure question of law, as she is advised. She avers that she is not aware of any fact upon which said claim of said assignee of title can be based; that she obtained her letters testamentary aforesaid in good faith and prosecuted said proceedings to revive and keep in force said judgment against said Brown in the most absolutely good faith and in the belief that she alone had the right so to do. She further says that no thought occurred to her, prior to the filing of said bill of complaint herein by said Brown, to the effect that said bankruptcy proceedings divested her husband, the late Stephen T. Wygant, of the title to said judgment, and she did not mention said proceedings in any way or manner to any person in connection with *with* the obtaining of said letters testamentary or the revivor of said judgment, and she was not aware that any person claimed or had
107 a right to claim that any assignee in bankruptcy or other person than herself, as testatrix of said Stephen T. Wygant, possessed the title, either in law or in equity, of and to said judgment. She avers that she has no personal knowledge of any of the details of said bankruptcy proceedings. She knew of the existence of such proceedings at the time it was instituted and for years thereafter, and up to the present time has been aware of the fact generally and commonly known and expressed that her said husband had "passed through bankruptcy," but she avers that she never knew from hearsay or otherwise that anything took place in and during said proceedings in bankruptcy that had or can have the effect of vesting the title of said judgment in any assignee or of de-

priving her of a right as executrix as aforesaid to pursue the course followed by her for the revivor of said judgment as set forth.

She does not deny that the proceedings which are properly certified as of record in said bankruptcy suit took place, but says she has no personal knowledge of them and never heard of them until after the original bill of said Brown was filed in this cause. But she avers that she has since then become the lawful assignee of all the claims of creditors against said bankrupt's estate, excepting the claim of the city of New York, that were, as she has learned, duly proved, and that she is now the owner thereof; and she submits that said Brown has no equity in the premises, and that in equity this defendant alone is entitled to hold said judgment, subject to the claim of the city of New York or of said Leeds, if this honorable court shall be of opinion that he is entitled to represent the creditors in said bankruptcy proceedings.

This defendant submits her rights and interests in the premises to the protection of the court and offers to abide the judg-
108 ment and decree thereof, and to do any and all things in the premises that justice and equity may require.

GRACE WYGANT.

CHAS. H. ARMES,
Sol. for Def't Wygant.

Grace Wygant, being duly sworn, says she has read the above answer by her subscribed; that the statements contained therein made upon her personal knowlege are true and those made upon information and belief she believes to be true.

GRACE WYGANT.

COMMONWEALTH OF MASSACHUSETTS, } *ss:*
Worcester County, }

On this fourth day of December, A. D. 1890, before me, Charles Brimblecom, a notary public in and for said county and State, personally came the aforenamed Grace Wygant and made oath to the truth of the foregoing affidavit by her in my presence subscribed.

In testimony whereof I hereunto set my hand and affix my notarial seal the day and year last above written.

[SEAL.] CHARLES BRIMBLECOM,
Notary Public.

Entry in Order Book 12, *Page* 6.

BROWN
vs. } 10666.
WYGANT, Executrix, *et al.*

JAN'Y 17, 1891.

109 The clerk will please place this cause on the February next calendar.

ROBERT CHRISTY,
Sol. for Complainant Brown.

Calendared as ordered.
'91, 1, 17.

BY THE CLERK.

Final Decree Granting Injunction and Dismissing Cross-bill.

Filed February 14, 1891.

In the Supreme Court of the District of Columbia.

JOSEPH M. BROWN *vs.* GRACE WYGANT, Executrix of Stephen T. Wygant, Deceased, *et al.*	In Equity. No. 10666, Doc. 27.

This cause came on to be further heard upon the bill of complaint and the amendments thereof, the answers of the said Grace Wygant, executrix of Stephen T. Wygant, deceased, and of Henry Leeds, assignee in bankruptcy of the said Stephen T. Wygant, deceased, and upon the cross-bill of the said Henry Leeds, and the answers of the said Joseph M. Brown, complainant, and of the said Grace Wygant, executrix of the said Stephen T. Wygant, thereto, and upon the testimony on files in the cause, and was argued by counsel of the respective parties.

Whereupon, on consideration thereof, it is this 14th day of February, A. D. 1891, ordered, adjudged, and decreed that the said defendant, Grace Wygant, executrix of Stephen T. Wygant, deceased,
110 be, and she is hereby, perpetually enjoined, both as such executrix and by her agents and attorneys, from all proceedings whatsoever to enforce the judgment for $5,000.00 rendered on the law side of this court in cause numbered 11757, in said bill of complaint mentioned, and from all efforts to annoy or harrass the said complainant in respect thereto, and the said Grace Wygant, executrix, &c., is likewise enjoined from further prosecuting the judgment obtained by her against the complainant in respect to said judgment for $5,000.00 in the supreme court of the county of New York, in the city of New York, in the State of New York, in said bill of complaint mentioned.

And that the said complainant recover his costs against the said executrix incident to the prosecution of his bill of complaint.

It is further ordered, adjudged, and decreed that the cross-bill of the said Henry Leeds, assignee in bankruptcy of Stephen T. Wygant, be, and the same is hereby, dismissed, and that the complainant shall recover his costs incident to such cross-bill.

A. C. BRADLEY, *Justice.*

Entry in Order Book 12, Page 21.

BROWN *vs.* WYGANT. } 10666.

Christy, Armes, Birney.

The clerk will enter appeals by both Grace Wygant, ex'x, and Henry Leeds from the decree of the special term of Feb'y 14, '91.

C. H. ARMES,
Sol. for Grace Wygant.
A. A. BIRNEY,
Sol. for Henry Leeds.

Appeal, ordered, entered.
'91, 2, 18.

BY THE CLERK.

111 *Decree of General Term Reversing Decree of Special Term.*

Filed April 4, 1892.

In the Supreme Court of the District of Columbia, in General Term.

JOSEPH M. BROWN, Complainant,
vs.
GRACE WYGANT, Executrix, and HENRY LEEDS, Assignee in Bankruptcy, of Stephen T. Wygant, Deceased. } No. 10666. Eq.

This cause coming on to be heard on the appeals of the defendant from the decree of the special term passed February 14, 1891, and having been duly considered, it is this 4th day of April, 1892, ordered, adjudged, and decreed that said decree of the special term be, and the same is hereby, vacated and reversed, and the bill of complaint of the said Joseph M. Brown is dismissed.

And it is further ordered, adjudged, and decreed, upon consideration of the proceedings under the cross-bill of the defendant Henry Leeds, assignee in bankruptcy of said Stephen T. Wygant, deceased, that the judgment in favor of Thomas L. Raymond against said Joseph M. Brown, being numbered 11757 on the law docket of this court, and assigned by said Raymond to Stephen T. Wygant in his lifetime, is the property of said Henry Leeds as assignee in bankruptcy of said Stephen T. Wygant and is an asset of said bankrupt's estate, and said assignee is entitled to recover the same from said Joseph M. Brown; and it is further decreed that said Grace Wygant, executrix, convey and assign to said Henry Leeds, assignee, all her apparent rights in said judgment within ten
112 days from this date, and in default of the execution of such assignment or transfer it is ordered that the clerk of this court

enter upon the record of said judgment a memorandum reciting that the same is to be collected to the use of Henry Leeds, assignee in bankruptcy of said Stephen T. Wygant.

It is further ordered that the complainant pay the costs of this cause, to be taxed by the clerk, and that the defendant Henry Leeds, assignee, have execution thereof as at law.

By the court:

E. F. BINGHAM, *C. J.*

Motion to Vacate Decree.

Filed April 16, 1892.

In the Supreme Court of the District of Columbia, In General Term.

JOSEPH M. BROWN, Complainant,
vs.
GRACE WYGANT, Executrix, and HENRY Leeds, Assignee in Bankruptcy of Stephen T. Wygant, Deceased. } In Equity. No. 10666.

The complainant now comes, by his solicitor, and moves the court to set aside the decree heretofore rendered herein on, to wit, April 4, 1892, and to remand this cause to the special term for equity business; that testimony may be taken by the respective parties as they may be advised touching the issues raised both upon the original bill, the respective answers thereto, and upon the cross-bill and
113 the respective answers thereto, for the reasons set forth in the affidavit of the complainant hereto attached, marked "Exhibit J. M. B.," as a part hereof. The complainant hereby tenders himself ready to speed the taking of such testimony as rapidly as practicable.

ROBERT CHRISTY,
Solicitor for Complainant.

EXHIBIT J. M. B.

In the Supreme Court of the District of Columbia.

JOSEPH M. BROWN
vs.
GRACE WYGANT, Executrix of Stephen T. Wygant, Deceased, *et al.*

and

HENRY LEEDS, Assignee in Bankruptcy of Stephen T. Wygant,
vs.
JOSEPH M. BROWN and GRACE WYGANT, Executrix of Stephen T. Wygant, Deceased.

In Equity. No. 10666.

Cross-bill.

UNITED STATES OF AMERICA, *District of Columbia*, } *ss*:

Joseph M. Brown, being duly sworn according to law, deposes and says that neither he nor his solicitor was present at the announcing of the opinion by the general term of the supreme court of the District of Columbia, nor was either of them consulted in respect to the decree rendered by said general term on, to wit, the 4th day of April, A. D. 1892.

114 That after being advised that an adverse opinion had been rendered against affiant both by himself and solicitor diligent efforts were made to obtain a copy of said opinion in order that the decree might be prepared in accordance therewith; that the stenographer who took the notes of the said opinion being continuously engaged in reporting the proceedings in an important cause pending in the criminal term of said supreme court, affiant was unable to procure from said stenographer the typewritten copy of said opinion until the after part of the day on the 11th inst., and, affiant's presence being required in the city of New York by a previous and important business engagement imposed by his employers, he left said city of Washington on the evening of the said 11th instant and was only enabled to return and advise with his said solicitor on this instant.

Affiant further deposes and says that the original judgment upon which this suit is based was rendered on the law side of this honorable court, in cause numbered 11757, on the 9th day of February, A. D. 1874.

That the suit was brought on said law side of this court in the name of Thomas L. Raymond, and the causes of action set forth in the declaration filed therein were two promissory notes made by this affiant for one and four thousand dollars respectively, payable to the order of Stephen T. Wygant and by him endorsed in blank;

that the said endorser was the same Stephen T. Wygant averred to be the testator of the said executrix, Grace Wygant, executrix.

That this deponent and the said Stephen T. Wygant, then in full life but since deceased, were joint makers of said promissory notes; that the entire proceeds of said one-thousand-dollar note were paid to the said Stephen T. Wygant and appropriated wholly to
115 his own use, no portion of the same having come into the possession or being used or applied to the benefit of this affiant; that the proceeds of the said four-thousand-dollar note were to be used to advance the execution of a certain contract made by and with the late Board of Public Works for a street improvement in the city of Washington, in said District, in which the said Stephen T. Wygant, Stephen H. Ingersoll, a brother-in-law of said Stephen T. Wygant, and affiant were to be jointly interested as copartners. It was understood and agreed that the said Stephen T. Wygant and Stephen T. H. Ingersoll were to secure the necessary funds to prosecute the work on behalf of the firm, the said Stephen H. Ingersoll having a patent for the pavement required to be laid under said contract; that affiant, being the maker of said promissory notes, was advised that he could not interpose any defence thereto, the said Thomas L. Raymond being the holder thereof, and so far as it could then be shown an innocent purchaser thereof for value before due; that affiant was absent from the city of Washington and in the city of Chicago, Illinois, at the time his attorney, one H. D. Beam, took the responsibility of making and entering into the stipulation upon which such judgment was rendered.

That affiant has no knowledge of the subsequent assignment of said judgment by the said Thomas L. Raymond to the said Stephen T. Wygant until many years after the same appears to have been made; that no notice of such assignment was ever given to affiant.

That affiant has always believed that if opportunity were afforded him, and he still so believes and deposes, he could establish the fact that he was not bound for any portion of said promissory note for one thousand dollars to the said Stephen T. Wygant in his
116 lifetime, nor to his assignee in bankruptcy, nor to the executrix of the said Stephen T. Wygant; that upon a just accounting in respect to the said note of four thousand dollars by reason of the unsettled copartnership aforesaid it would appear that there was but an inconsiderable portion thereof due from him, if any.

That the said notes were made in the form aforesaid at the suggestion of the said Stephen T. Wygant and the money realized thereon by him at the Produce bank, in the city of New York (the said Thomas L. Raymond being the cashier thereof), and only the sum of four thousand dollars transmitted to affiant at the city of Washington by the check of the said Stephen T. Wygant; and affiant refers to the papers on file in said suit at law and makes the same a part of this his affidavit.

That affiant and his counsel did not offer the testimony of affiant, when under examination, to any facts transpiring during the lifetime of said Stephen T. Wygant, believing that such testimony was not competent to be offered against an executrix of a deceased tes-

tator; and objections to the testimony actually taken are still undisposed of, endangering the rights of affiant on any appeal to the Supreme Court of the United States, if such appeal be taken, as affiant is advised.

JOSEPH M. BROWN.

Sworn to before me and signed in my presence this 16th day of April, A. D. 1892.

J. R. YOUNG, *Clerk.*

117 In the Supreme Court of the District of Columbia, General Term.

JOSEPH M. BROWN, Complainant, *vs.* GRACE WYGANT, Executrix, and HENRY LEEDS, Assignee of Stephen T. Wygant.	In Equity.	No. 10666.

You are hereby notified that the foregoing motion will be brought to the notice of the general term on Tuesday, the 19th inst., at the opening of the court or as soon thereafter as counsel can be heard.

ROBERT CHRISTY,
Solicitor for Complainant.

To A. A. Birney, attorney for Henry Leeds; C. H. Armes, solicitor for Grace Wygant.

Decree Overruling Motion, &c.

Filed November 21, 1892.

In the Supreme Court of the District of Columbia, General Term.

JOSEPH M. BROWN, Complainant, *vs.* GRACE WYGANT, Executrix of Stephen T. Wygant, Deceased, and Henry Leeds, Assignee in Bankruptcy of Stephen T. Wygant, Defendants.	In Equity.	No. 10666.

118 This cause coming on to be further heard upon the motion filed in this court by the complainant, Joseph M. Brown, on the 6th day of April, A. D. 1892, to vacate the decree, &c., rendered by this court on the 4th day of April, A. D. 1892, and thereupon, upon consideration thereof, it is ordered, adjudged, and decreed as follows, viz., that the said motion be, and the same is hereby, denied.

Whereupon the said complainant, Joseph M. Brown, in open court appealed from the decree rendered by this court on the 4th day of April, A. D. 1892, which appeal was allowed by the court upon the complainant, Joseph M. Brown, giving bond, with surety, to the satisfaction of this court in the sum of two hundred and fifty dollars for payment of costs.

E. F. BINGHAM. *C. J.*

Bond on Appeal to Supreme Court U. S.

Filed December 9, 1892.

In the Supreme Court of the District of Columbia, the 9th Day of December, 1892.

JOSEPH M. BROWN *vs.* GRACE WYGANT, Executrix, &c., and HENRY LEEDS, Assignee, &c.	In Equity.	No. 10666.

Know all men by these presents that we, Joseph M. Brown and Albert Gleason, are bound unto the above-named Henry Leeds, assignee of Stephen T. Wygant (in bankruptcy), in the sum of ($250.00) two hundred and fifty dollars, to be paid to the said Henry Leeds, assignee in bankruptcy of Stephen T. Wygant, his successors, executors, or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and
119 severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this ninth day of December, A. D. 1892.

Whereas the above-named Joseph M. Brown has prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above suit by the said supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is such that if the above-named Joseph M. Brown shall prosecute his said appeal to effect and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

JOSEPH M. BROWN. [SEAL.]
ALBERT GLEASON. [SEAL.]

Sealed and delivered in the presence of—

H. P. MARSHAL.

Approved the 9th day of December, 1892.

E. F. BINGHAM,
Chief Justice S. C., D. C.

I consent to the approval of this bond.

A. A. BIRNEY,
Counsel for Henry Leeds, Assignee.

120 *Motion for Order Extending Time.*

Filed December 17, 1892.

In the Supreme Court of the District of Columbia.

JOSEPH M. BROWN *vs.* GRACE WYGANT, Executrix, and Henry Leeds, Assignee in Bankruptcy, &c.	In Equity. No. 10666. Motion to Extend Time to Complete Record on Appeal to Supreme Court U. S.

General term.

And now comes the said plaintiff, by Robert Christy, his solicitor, and moves the court for an order extending the time within which the record for the Supreme Court of the United States may be prepared and filed, said cause having been appealed thereto, to wit, may be extended for an additional period of thirty days from and after the expiration of the first thirty days allowed by law and the rules of said Supreme Court of the United States, for the following reasons:

1. The impracticability to complete such record within such period of thirty days, owing to the voluminous character of such record.

2. Because the solicitor of plaintiff has been necessarily absent on professional business in the State of Massachusetts, and was unable therefore to give the necessary instructions touching the preparation of such record, the same involving the copying of certain exhibits in a cause at law pending in the said supreme court of the District of Columbia.

3. Because the clerk of said supreme court of the District of
121 Columbia has been unable hitherto to collect together all the papers in said cause indispensable to a complete record and the remaining time of said first thirty days is not sufficient to allow the making of such record.

4. And for other good and sufficient reasons.

ROBERT CHRISTY,
Solicitor for Plaintiff Brown.

To solicitor for defendants:

You are hereby notified that the foregoing motion will be presented to the supreme court of the District of Columbia on Tuesday, the 20th day of December, at the opening of the general term of said court on that day or as soon thereafter as counsel can be heard.

ROBERT CHRISTY,
Solicitor for Plaintiff Brown.

TUESDAY, *December* 20, 1892.

Session resumed pursuant to adjournment.
Present: Chief Justice Bingham and Justices Hagner and Cox.

JOSEPH M. BROWN
vs.
GRACE WYGANT and HENRY LEEDS, Assignee of Stephen T. Wygant, Bankrupt. } 10666. Equity.

On motion of the plaintiff, by Robert Christy, his solicitor, and it appearing that an appeal was taken by the said plaintiff, Joseph M. Brown, in open court from the final decree of this court in
122 general term passed on the 4th day of April, A. D. 1892, said appeal having been taken in open court as aforesaid on the 21st day of November, A. D. 1892, and good cause having been shown to this court why the record cannot be prepared and transmitted to the Supreme Court within thirty days from and after the said taking of said appeal, it is this 20th day of December, A. D. 1892, ordered that the time for filing said record in said Supreme Court of the United States be, and the same is hereby, enlarged to sixty days from date of said appeal.

(Signed) E. F. BINGHAM, *C. J.*

123 *Stipulation of Counsel.*

Filed January 19, 1893.

In the Supreme Court of the District of Columbia.

JOSEPH M. BROWN
vs.
GRACE T. WYGANT, Ex'x of Stephen T. Wygant, Dec'd, and Henry Leeds, Assignee in Bankruptcy of Stephen T. Wygant, Dec'd. } No. 10666. In Equity.

It is hereby stipulated and agreed between the parties hereto that the record of law cause No. 11757, named as an exhibit in complainant's testimony, may be omitted from the record for the Supreme Court of the United States, substituting therefor a copy of the docket entries in said law case; and it is further stipulated and agreed that the foregoing is a complete record of all the papers, exhibits, depositions, and other proceedings which are necessary to the hearing of this cause in this court or in the Supreme Court of the United States, to which it is appealed.

ROBERT CHRISTY,
Solicitor for Complainant.
A. A. BIRNEY,
Sol'r for Defendant Leeds.
C. H. ARMES,
Solicitor for Defendant Grace Wygant.

124 In the Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia,* } ss:

I, John R. Young, clerk of the supreme court of the District of Columbia, do hereby certify the foregoing to be a true and correct transcript of the record of all the proceedings had in said court under the stipulation filed January 19, 1893, in the cause wherein Joseph M. Brown is the complainant and Grace T. Wygant, executrix of Stephen T. Wygant, deceased, and Henry Leeds, assignee in bankruptcy of Stephen T. Wygant, deceased, are the defendants, as the same appears from the files and records of said court now remaining in my custody and control.

Seal Supreme Court of the District of Columbia.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of Washington, this 19th day of January, A. D. 1893.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: Case No. 15,246. District of Columbia supreme court. Term No., 209. Joseph M. Brown, appellant, *vs.* Grace T. Wygant, executrix of Stephen T. Wygant, deceased, & Henry Leeds, assignee in bankruptcy of Stephen T. Wygant, deceased. Filed January 20th, 1893.

Office Supreme Court U. S.
FILED.
MAR 31 1896
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1895.

JOSEPH M. BROWN,
APPELLANT,

vs.

GRACE WYGANT, EXECUTRIX OF STEPHEN T. WYGANT, DECEASED, AND HENRY LEEDS, ASSIGNEE IN BANKRUPTCY OF STEPHEN T. WYGANT, DECEASED,
APPELLEES.

No. 209.

Appeal from the Supreme Court of the District of Columbia.

BRIEF FOR APPELLANT.

BY ROBERT CHRISTY,
Solicitor.

WASHINGTON, D. C.:
GIBSON BROS., PRINTERS AND BOOKBINDERS.
1896.

124 In the Supreme Court of the District of Columbia.

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OCTOBER TERM, 1895.

JOSEPH M. BROWN, APPELLANT, v. GRACE WYGANT, EXECUTRIX OF STEPHEN T. WYGANT, DECEASED, *et al.*, APPELLEES.	*No.* 209.

Appeal from the Supreme Court of the District of Columbia.

Brief of Appellant.

I.

ABSTRACT OF RECORD.

I. ORIGINAL BILL OF COMPLAINT.

The appellant filed his bill of complaint in the supreme court of the District of Columbia June 22, 1887, against the appellee Grace Wygant, executrix of Stephen T. Wygant, deceased, alone.

2. The bill of complaint charged, amongst other things, that he, the complainant, was a citizen of the United States, residing in the District of Columbia, and that the said Grace Wygant was a resident of the State of New Jersey.

That on the 9th day of February, 1874, one Thomas L. Raymond obtained a judgment against the complainant, on the law side of the supreme court of the District of Columbia, for the sum of $5,000.00.

That on the 14th day of May, 1874, said Raymond assigned and transferred said judgment upon the records of said court to Stephen T. Wygant, the alleged testator of the said Grace Wygant.

That on the 23d day of February, 1878, the said Stephen T. Wygant was adjudged a bankrupt by the district court of the United States in and for the southern district of the State of New York.

That on the said 23d day of February, 1878, the said Stephen T. Wygant duly surrendered all of his property and rights of property, including said judgment, for $5,000.00, as required by law.

That on the 20th day of March, 1878, one Henry T. Godet was duly appointed by said court the assignee of the said estate of the said Stephen T. Wygant, and duly qualified and entered upon his duties as such assignee.

That said judgment for $5,000.00 was duly mentioned and set forth on the schedule of assets filed in said bankruptcy proceedings by the said Stephen T. Wygant.

That all and entire the interest of the said Stephen T. Wygant in said judgment for $5,000.00 passed to and vested in the said Henry T. Godet as such assignee.

That claims aggregating more than $12,000.00 were duly filed, proven, and allowed in said bankruptcy proceedings.

That said judgment of $5,000.00 was the principal asset, and the aggregate value of the assets was much less than the claims so allowed.

That the estate of said bankrupt had never been settled and the said judgment for $5,000.00 still belonged to the said Henry T. Godet as such assignee.

That the said judgment for $5,000.00 was rendered in cause numbered 11,757 on the dockets of said supreme court of the District of Columbia, and a reference made thereto.

(A duly authenticated copy of the bankruptcy proceedings was filed as an exhibit to the bill of complaint.)

That the defendant Grace Wygant had full knowledge of the bankruptcy proceedings, and relying upon appellant's ignorance thereof, and for the purpose of harassing appellant and putting him to trouble and expense, on the 12th day of January, 1886, applied to the justice holding a special term of said supreme court of the District of Columbia for probate business for letters testamentary on the estate of the said Stephen T. Wygant, then deceased, and obtained such letters testamentary by alleging, amongst other things, that said judgment for $5,000.00 was an asset of the estate of the said Stephen T. Wygant, though of little or no value, to wit, of the value of $100.00 or less.

That the said Grace Wygant, after receiving such letters testamentary, and on the 1st day of February, 1886, caused the clerk of said circuit court of the said supreme court of the District of Columbia to enter upon the docket of said circuit court a suggestion of the death of the said Stephen T. Wygant, and on the same day to issue a *scire facias* to the marshal of the said District of Columbia, and such *scire facias* having been returned endorsed "*nihil*," the said Grace Wygant, on the 4th day of the said month of February, 1886, caused an alias writ of *scire facias* to be issued to the said marshal and to be returned on the same day, likewise endorsed "*nihil*."

That the said Grace Wygant obtained upon the issuance and return of such writs of *scire facias*, a "*fiat*" from the

justice holding said circuit court on the 3d day of March, 1886, for the purpose of reviving such judgment.

That the appellant had no knowledge of such proceedings in the said special terms of said supreme court of the District of Columbia for probate and circuit court business until a long time after the rendition of said "*fiat*."

That appellant, as soon as he received notice of such proceedings, with due and reasonable diligence, prepared and filed his motion to set aside such proceedings and for the vacating of such "*fiat*," but that the justice holding such circuit court, deeming himself without jurisdiction in the premises, overruled such motion, reserving to appellant, however, all his rights to proceed in equity for relief.

That, after the rendition of the "*fiat*" aforesaid, the said Grace Wygant, as such executrix, brought and prosecuted an action for the enforcement of such judgment against appellant, in the supreme court of the county of New York, in the city of New York, on the 28th day of December, 1885.

That the appellant also, in his bill of complaint, asked for both a temporary and final injunction against the said Grace Wygant, as such executrix, and for general relief.

2. Demurrer.

On the 10th of December, 1887, the defendant Grace Wygant, executrix of Stephen T. Wygant, filed a general demurrer, through her solicitor, to the bill of complaint.

3. Demurrer Sustained.

On the 28th of December, 1887, the demurrer was sustained, the decree being as follows: "This cause coming on to be heard on the original bill of complaint and the de-

murrer thereto, it is, this 23d day of December, 1887, ordered, adjudged, and decreed that, for the purposes of the present object of the bill, the demurrer be and is sustained, and that the bill be amended making the assignee of the alleged bankrupt a party thereto, and that the cause be entered to the next term of this court for the purpose of making the necessary parties, and of amending otherwise as the complainant may be advised, and that the complainant pay the costs of the cause up to this time."

4. Amendment of Original Bill.

On the 10th day of January, 1888, the appellant amended his original bill as required by the order of the court, by adding the name of Henry T. Godet, assignee in bankruptcy of Stephen T. Wygant, deceased, as an additional defendant, and otherwise to conform to this compulsory change of parties, notably by filing as an exhibit the assignment conveying to Godet, assignee in bankruptcy, the entire estate of the said bankrupt, executed March 3, 1878, by the register in bankruptcy.

5. On January 30, 1888, Grace Wygant, executrix, filed a general demurrer to the amended bill, which, being certified to the general term to be heard in the first instance, was overruled, and the cause remanded to the special term.

6. On June 26, 1888, the defendant Grace Wygant filed her answer to the amended bill.

7. On the 26th of June, 1888, the complainant filed his replication to the answer of Grace Wygant to the original bill.

8. On the 5th day of February, 1888, an injunction *pendente lite* was allowed against Grace Wygant, executrix, as prayed in the bill.

9. On the 11th of September, 1888, on motion of solic-

itor for defendant, the death of Godet, assignee, was entered of record.

10. Testimony on Behalf of Complainant.

On the 27th of September, 1889, the testimony taken on behalf of the complainant was filed.

It appeared from the testimony that the complainant had filed as a part thereof a duly certified copy of the assignment made and delivered by the register in bankruptcy on the 23d day of March, A. D. 1878, to Henry T. Godet, of the city of New York, and State of New York, assignee of Stephen Wygant, bankrupt.

This instrument recites that it embraces all the estate of the bankrupt, real and personal, and conveys the same by virtue of the authority vested in the register by the 14th section of "An act of Congress to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867.

The complainant, appearing as a witness in his own behalf, testified that shortly after the order of court requiring him to make Henry T. Godet a party, and after a subpœna had been issued and returned, he called upon Godet at his place of business in New York city, and told him he had been made a party to the suit in Washington; that Godet said he knew all about it; that he knew he had been made a party, but that the suit for revival had been commenced and prosecuted, without his knowledge and not in his interest in any way, by Mrs. Wygant, and therefore he would have nothing to do with it.

Complainant also testified that early in 1886 he had called upon defendant Grace Wygant; that she admitted she knew of the bankruptcy of her husband; that her husband had been induced to go on a bond for $50,000 by

one Charles P. Crosby, of New York, which being compelled to pay, he was forced to go into bankruptcy; that her husband's life policy for $40,000.00 was not influenced in any way by the bankruptcy proceedings, and that she had obtained that sum from the company.

Witness further testified that Godet, in the conversation referred to before by witness, stated that he (Godet) was a friend of Wygant, and that his counsel and Mr. Wygant's in the bankruptcy proceedings were the same—Smith and Ely, and that the original assignment of Wygant was in their hands; that as a result of this information he (witness) obtained the certified copy of the assignment, filed as a part of witness's testimony and marked "Exhibit A" by the examiner.

The testimony filed shows also that, the several exhibits referred to in the bill of complaint, and all the papers in the suit at law, being No. 11,757, Thomas L. Raymond, plaintiff, *v.* Joseph M. Brown, defendant, likewise the certified copy of the schedule and inventory in the matter of bankruptcy of Stephen T. Wygant (marked "Exhibit C"), and a certified copy of petition for a discharge, and other papers connected therewith (filed and marked "Exhibit D"), were made a part of the testimony (solicitor for defendant Grace T. Wygant objecting) by the examiner.

11. Order Limiting Defendant in Taking Testimony.

On the 11th day of April, 1890, complainant, by his solicitor, filed a motion for an order limiting the time within which the defendant Grace Wygant, executrix, should be required to take testimony on her behalf.

On the 15th of April, 1890, the court required the defendant Grace Wygant to take testimony in her behalf within thirty days.

On the 15th of May, 1890, the solicitor of defendant Grace Wygant moved for a further extension of time for the taking of testimony in her behalf.

No further effort was made, so far as appears from the record, to take testimony on behalf of the executrix, and on the 18th of June, 1890, the cause was placed on the calendar for hearing at the July term ensuing, on motion of solicitor for complainant.

REMARK.

It will be observed in this connection that no appearance had been entered for the assignee of Wygant, and that there was no power in the complainant, the court having no authority in the premises, to give constructive notice to the assignee by publication, he being a resident of the city of New York, after the return of the subpœna "not found," the cause not coming within the provisions of section 787 of the Revised Statutes relating to the District of Columbia, under which, in certain cases therein enumerated, publication could be substituted for personal service of process.

12. On the 16th of July, 1890, Henry Leeds, assignee of Wygant, filed his petition praying leave to be made a party defendant, and was admitted to the cause as defendant, against the opposition of complainant, by an order passed September 29, 1890, which order likewise required Leeds to take and conclude the testimony on his behalf within twenty days from the date of the order.

13. On the 4th of November Leeds, as assignee, filed his separate answer, substantially admitting the charges contained in the amended bill.

14. Complainant filed his replication to the answer of the assignee Leeds November 10, 1890.

15. November 10, 1890, leave was given to defendant Leeds to file a cross-bill.

16. On the same day the cross-bill was filed.

By this cross-bill—

Leeds, as assignee, after reciting the prior proceedings in the case, claimed to be entitled to the judgment, and prayed that it might be decreed to be an asset of the bankrupt's estate, and of full force and vigor against the complainant, and that the defendant Wygant should be decreed to assign to him such judgment and her apparent rights therein, and for general relief.

17. On the 25th day of November, 1890, the complainant filed his answer to the cross-bill. He denied that the supreme court of the District of Columbia had jurisdiction to issue the letters testamentary to the defendant Grace Wygant; denies that the "fiat" of the circuit court of the supreme court of the District of Columbia was pronounced by lawful authority; and denies that the judgment in controversy is still in force, or that it is good and pleadable.

Complainant likewise, in his answer, pleads the statute of limitations against said judgment, and relies upon the same; and prays the protection of the court in respect thereto, no lawful proceedings having been brought to revive the same; and that he may have by his answer the same benefit and advantage as if he had demurred to the cross-bill.

Complainant likewise averred, in his answer to the cross-bill (paragraph 8th), that Godet (the original assignee) had actual notice of the pendency of this suit, but refused and neglected to become a party thereto or in any manner submit to the jurisdiction of this court.

This answer was duly sworn to by the complainant.

18. On the 14th day of January, 1891, Grace Wygant, as executrix, filed her answer to the cross-bill, denying that Leeds was invested with the title to the judgment as assignee as claimed in the 3d paragraph of the cross-bill.

She likewise avers that since the filing of the original bill she has become the lawful assignee of all the claims of creditors against such bankrupt's estate, excepting the claim of the city of New York, that were, as she has learned, duly proved, and that she is now the owner thereof.

The answer is duly verified.

19. It should be remembered, in connection with the averment in the foregoing answer of the executrix, "that she was the lawful assignee of all the claims of creditors against such bankrupt's estate, excepting the claim of the city of New York;" that the order referred to by Leeds, assignee, passed by the district court of the United States for the southern district of New York (see page 57 of the printed transcript of record), constituting him assignee, was the result of proceedings instituted by Matilda Peirce as an alleged creditor of the bankrupt's estate; and that the averment of the executrix of the ownership of this amongst other claims is not challenged by Leeds, assignee, but for the purposes of this case stands admitted.

20. It should be likewise remembered that the averment of the complainant Brown in his answer to the cross-bill (see page 66, printed transcript of record), that "no notice was ever given to him of the assignment and transfer of the said judgment by the said Raymond to the said Wygant, nor of the attempt to revive said judgment by the said executrix, notwithstanding he was at the time of such assignment and transfer, and such proceedings to revive and attempts to revive such judgment, a resident of and within the city of Washington, in said District of Columbia, and could have been personally served with the process of said court," and that the same is to be taken as admitted, not having been denied by the pleadings nor disproved by the testimony.

21. The decree of the special term of the supreme court of the District of Columbia "granting injunction and dis-

missing cross-bill" is found on page 71 of the printed transcript of the record, and the decree of the general term reversing the decree of the special term is found on page 72 of said transcript.

This decree, rendered on the 4th day of April, 1892, in addition to the reversal of the decree of the special term, found the title to the judgment in controversy in the assignee Leeds, with the right to recover the same from the complainant Brown.

It also required the defendant executrix to assign her apparent rights to the assignee of Wygant.

22. On the 16th day of April, 1892, the complainant Brown moved the general term to set aside its decree and to remand the cause to the special term, that the respective parties might take testimony as they were advised. In support of this motion the complainant Brown filed his affidavit showing, amongst other things,—

1. That the suit at law was brought by one Raymond to enforce collection of two promissory notes made by complainant, one for $1,000, the other for $4,000, both payable to the order of Stephen T. Wygant, the testator and bankrupt.

2. That said complainant and Wygant were joint makers, in point of fact, of both of the notes. That Wygant discounted the same and appropriated one thousand wholly to his own use. That the remaining $4,000 was received by complainant and applied to the execution of a certain contract with the late board of public works of the District of Columbia, in which Wygant had an interest with complainant and one Ingersoll as copartners.

3. That Raymond being an innocent holder of the notes without notice, complainant was advised that he could not make defence thereto, and judgment was rendered thereon without opposition by complainant.

4. That complainant had no knowledge of the subsequent assignment of the judgment by Raymond to Wygant until many years after the same was made; that no notice of such assignment was ever given to complainant, either by Wygant, by his executrix, or by his assignee.

5. That upon a just accounting it would appear that there was but an inconsiderable portion of said $4,000 due from him, if any.

6. That complainant, when testifying as a witness in the cause, did not disclose the facts touching the consideration of the notes, because he was advised by counsel that such testimony was not competent, the sole opposite party at the time complainant testified being an executrix.

23. On the 21st day of November, 1892, the motion was overruled and an appeal allowed to this court, which appeal appellant perfected.

II.

Propositions of Law.

1. Counsel for appellant submits that at the time the defendant below, Grace Wygant, as executrix of the estate of her late husband, Stephen T. Wygant, applied for and obtained letters testamentary from the supreme court of the District of Columbia, sitting in probate jurisdiction, the entire interest in the judgment in controversy was in the assignee of her late husband, by virtue of the decree in bankruptcy pronounced by the district court of the United States in and for the southern district of New York on, to wit, the 23d day of February, A. D. 1878; that the executrix of the bankrupt had no right or authority to interfere in any manner with such judgment, and that she was in contemplation of law as much a stranger to the judgment as if her deceased husband had never had any interest therein.

Under the bankrupt act of March 2, 1867, all property of a bankrupt in his actual possession at the time of the filing of the petition in bankruptcy passes into the hands of the assignee the instant he is appointed.

In re Vogel, Blatch. Rep. 7–9.

2. As matter of convenience, I quote here section 5046 of the Revised Statutes:

"All property conveyed by the bankrupt in fraud of his creditors; all rights in equity; choses in action; patent rights and copyrights; all debts due him; or any person for his use, and all liens and securities therefor; and all his rights of action for property or estate, real or personal, and for any cause of action which he had against any person arising from contract, or from the unlawful taking or detention or injury to the property of the bankrupt, and all his rights of redeeming such property or estate, together with the like right, title, power, and authority to sell, manage, dispose of, sue for, and recover or defend the same as the bankrupt might have had if no assignment had been made, shall, in virtue of the adjudication of bankruptcy and the appointment of his assignee, be at once vested in such assignee."

3. A petition in bankruptcy is an action or suit, and an adjudication of bankruptcy thereon is a final judgment beyond the power of Congress to annul or set aside.

Dist. of Oregon, *Re* Comstock, 3d Sawy. 128.

An adjudication declaring a person a bankrupt is in the nature of a judgment *in rem*, and notice to and binding upon all the world.

Dist. of Oregon (1868), *Re* Wallace, Deady, 433.

Although the history of this case shows, presumably, that the appellee, executrix, had actual knowledge of the pendency and nature of the proceedings in bankruptcy against

her husband, she admitting that she had secured $40,000 from the financial wreck, yet it is sufficient, for the purposes of the argument, to charge against her that constructive knowledge attributed by the law itself.

4. We further submit that the district court of the southern district of New York had exclusive jurisdiction over the estate of the bankrupt, not only within that special district, but wherever situate, and that such jurisdiction continued in full force until the final settlement and disposition of the bankrupt's estate.

The following authorities clearly support this proposition:

"The court of bankruptcy has exclusive jurisdiction of the bankrupt's estate, and of its administration, from the time of the adjudication to the final discharge of the estate and discharge of the assignee, and this jurisdiction does not cease with the order of distribution."

District of Iowa, *Re* Cunningham, 9 Cent. L. J. 208.

"Full and complete jurisdiction in bankruptcy proceedings, for all purposes whatsoever, is conferred by the petition, adjudication, and warrant, whether in voluntary or involuntary proceedings."

E. Dist. of Michigan, Archenbrown, 11 Bank't Reg. 149.

"Assignees of a bankrupt, or of an insolvent debtor, under the laws applicable to such cases, are vested with the title to the real as well as the personal property of the debtor, by mere force of their appointment, and may maintain ejectment therefor."

Doe *v.* Abrahams, 1 Stark. 305.

"The decree absolutely divests the bankrupt of all real or personal estate, or choses in action formerly owned by him, and vests the same in the assignee."

Williams *v.* Blakeman, 4 Chancellor's Decisions (N. Y.) 8.

5. We further submit that the discharge of the bankrupt did not reinvest him with the title to nor control over the judgment, and that the executrix has not any rights different from or greater than those possessed in his lifetime by her testator.

In Clark *v.* Clark (17 Howard, 315) the court held that "the bankrupt is personally released by a discharge, but the property and rights of property which vested in the assignee are subject to the creditors and are held in trust for them in whatever hands they may be found."

6. The fact that the adjudication of bankruptcy was rendered against Wygant by the United States district court in the State of New York did not prevent his bringing suit in the District of Columbia.

"A suit may be maintained by an assignee to collect the assets in a district court other than that where the proceedings in bankruptcy are pending."

(W. Dist. Wis.) Goodall *v.* Tuttle, 3 Biss. 219.

The bankrupt's assignee, and he alone, could perform any act in respect to the judgment in controversy. All other parties, including the executrix of Wygant, were mere strangers as to the record, and could not lawfully interfere with it; their acts would be mere nullities, and the orders of court based thereon without authority of law.

It is said by an eminent authority on the law of bankruptcy: "The bankrupt act expressly enacts that all choses in action, all debts due the bankrupt, all causes of action * * * shall in virtue of the adjudication of bankruptcy and the appointment of his assignee be at once vested in the assignee."

Bump on Bankruptcy, 37, sec. 14.

In Cook *v.* Lansing, Justice McLean stated the facts of the case as follows:

"This action is founded on a judgment obtained in the State of New York. The defendants pleaded that the plaintiffs filed their petition in bankruptcy (under the act of 1841); that the assignee was appointed; that the above judgment was placed in the schedule of assets; and the right having passed out of the plaintiffs to the assignee the suit should have been brought in his name. To this plea a demurrer was filed." And thereupon said, "under the bankrupt act the property and interests of the bankrupt were vested in the assignee. Provision was made for the prosecution of suits pending, but all suits commenced after the appointment of the assignee should be brought in his name or at least prosecuted for the benefit of the creditors, whom he represents, and as this suit has not been brought in either of these forms but by the bankrupts, the demurrer to the plea is overruled."

McLean's Circuit Court Rep., vol. 3, p. 571.

The following is the syllabus of the case of Mayhew *v.* Pentecost:

"An action upon a debt due to a bankrupt before his bankruptcy may be brought in the name of the bankrupt, with the consent and for the benefit of the assignee in bankruptcy, who is also the assignee in fact."

It appears from the report of this case that one Coleman had been chosen the assignee in bankruptcy of the plaintiff, Mayhew; that the writ stated that the suit was brought for the benefit of Coleman, as the assignee in bankruptcy of Mayhew; that Coleman had filed an affidavit in the case to the effect that the suit was brought in the name of Mayhew for his benefit as such assignee; and that he made the affidavit so that the judgment might be conclusive upon him.

Gray, C. J., in pronouncing the decision of the court, quoted, with approval, the language used by Mr. Justice McLean in Cook *v.* Lansing, referred to above.

129 Mass. R., p. 332.

How different the facts in this case from those of the case under consideration.

The executrix, Wygant, institutes the proceedings in her own name without the consent or knowledge of the assignee, solely for her own benefit, and directs it exclusively to her own advantage, to the extent of bringing suit against the appellant in the courts of a foreign jurisdiction.

8. The appellant properly brought his suit below for his protection against the unlawful acts of the executrix, and against her alone, and in a form that in no degree trenched upon the rights of the assignee of Wygant, if any he had, nor conferred upon the court the power to require the appellant to make such assignee a party.

It was held in Stevens *v.* Mechanics' Savings B. (101 Mass. Rep., p. 109 (1889) that "payment to a bankrupt, made after notice of the warrant in bankruptcy, under the United States Statutes (1867, c. 176, 11), although made in good faith, and without knowledge of the bankruptcy, is no protection against the bankrupt's assignee.

That the executrix has put in motion the judicial processes solely in her own interest is conclusively shown by the fact that even after the assignee in bankruptcy entered his tardy appearance in the cause, the executrix challenges his right to the judgment, and demands that it shall be declared to belong to an estate of which she is personally the sole beneficiary.

III.

The Alleged Revival of the Judgment by the Circuit Court was Without Authority of Law.

1. Stephen T. Wygant, the deceased bankrupt and the testator of Grace Wygant, was not the original judgment creditor in the suit at law, the judgment having been rendered in favor of one Thomas L. Raymond, the plaintiff in that suit.

2. The appellee Grace Wygant, executrix, caused the *scire facias* to be issued to the appellant without any notice whatever to him of the assignment of the judgment to her testator.

"A person not a party to the record cannot be benefited or charged by the process without a *scire facias*."
Bacon's Abr., vol. 6, p. 116.

3. A *scire facias* is an action to which the party to be charged can and must have the opportunity to plead.

"A *scire facias*, whether considered as an original or judicial writ, is an action, and such as the plaintiff may plead to."
Bacon's Abr., vol. 6, p. 123.

"So as by the writ it appeareth that the defendant is to be warned to plead any matter in bar of execution, and therefore, albeit it be a judicial writ, yet because the defendant may therefore plead this *scire facias* is accounted in law to be in the nature of an action."
Coke on Littleton, Marg., p. 525.

A *scire facias* upon a judgment is not a mere continuation of a former suit, but creates a new right.
Farrell *v.* Gleason, 11 Cl. & Fin. 702. (Exchequer Dig. 745.)

"After three years" (a modification by statute as to time) "the law presumes a judgment to be executed or satisfied, the plaintiff must then sue out a *scire facias* to revive the judgment, to which the defendant may appear and plead in the same manner as to the original writ."

Mulliken *v.* Duvall, 7 G. & J. 355.

"A *scire facias* is a judicial writ issued to enfore the execution of some matter of record on which it is founded; but though a judicial writ or writ of execution, it is so far an original that the defendant may plead to it."

Winder *v.* Caldwell, 14 Howard, 443.

This case was brought up by writ of error from the circuit court of the United States for the District of Columbia.

"The affidavit of the existence of the debt, on which to ground a motion for *scire facias* to revive the judgment, ought either to be made by the plaintiff himself or by some person who was the attorney at the time of the judgment."

The Duke of Norfolk *v.* Leicester, 1 M. & W. 204. (Exchcq. Dig., p. 475.)

4. The presumption claimed by the appellees that the return of *nihil* to two writs of *scire facias* was the equivalent of actual notice is wholly unreasonable and has no foundation in law.

"The court refused to allow a plaintiff to sign judgment on the return of *nihil* to two writs of *scire facias*, it not appearing that any endeavor had been made to give the party notice."

Sabine *v.* Field, 1 C. & M. 466.

There could be no execution on a *scire facias* to revive an old judgment till *scire feci* returned or an affidavit of notice.

Baynall *v.* Gray, 2. W. Black, 1140. (Harrison Index, Vol. III.)

5. It is to be presumed that the appellant (the judgment debtor below) was a resident of the District of Columbia at the respective times the writs of *scire facias* were issued and perfunctorily returned. He so avers it in his original bill; it is admitted in the answers of the appellees and not denied by the cross-bill of the assignee.

The judgment in controversy was rendered against the appellant in a court of the District of Columbia.

"A domicil once existing continues until another is acquired, and where a change thereof is alleged the burthen of proof rests upon the party making the allegation."

Desmare *v.* U. S., 93 U. S., p. 605.

6. At the time the decree of the general term of the District of Columbia was rendered, the decree brought to this court by the appeal of the appellant, he had a just and sufficient defence to the judgment, the base of that decree; a defence that he had no opportunity to present; a defence that he was not precluded from making by the condition of the pleadings; a defence that was exposed to the general term in support of his motion for leave to take testimony in response to the charges of the cross-bill, and which was in substance as follows (p. 74, printed transcript of record): The judgment was based upon two promissory notes, one for $1,000, the other for $4,000. That the deceased bankrupt and appellant were joint makers, though upon the face of the notes the bankrupt, Wygant, appeared as the payee; that the entire proceeds of the $1,000 were appropriated to his own use by the bankrupt after discount was made; that the proceeds of the $4,000 were applied to the advancement of a joint venture in which appellant and the bankrupt participated, and upon an accounting it would appear that appellant was not indebted; that appellant could not make his defence to the suit by the holder of

the notes, Raymond, presumably an innocent purchaser; that appellant could not testify to these facts whilst the sole and adverse party was a personal representative of a deceased person; and that he had no opportunity allowed him after the assignee was admitted a party to the suit (improperly, however, admitted, as appellant respectfully submits). In connection with his testimony, the appellant put in evidence the record of the case at law showing that Wygant made no effort to collect this judgment during his lifetime.

7. The appellant assails the proceedings touching the writs of *scire facias* not as to form or regularity, but as to substance; they were in the nature of a declaration, and he should have had actual notice of the pendency and opportunity to plead any defence he might have had thereto, after the entry of the judgment to the use of the bankrupt, Wygant.

In delivering the opinion of the court in McKnew *v.* Duvall (45 Mary., p. 509), Alvey, J., said: "It has been repeatedly decided that a *scire facias* is in the nature of a declaration, and that it should contain upon its face such a statement of facts as to justify the process in respect to the form in which it is issued."

8. As to the cross-bill, appellant submits that Leeds was not a necessary party, was not a proper party, and the court below erred in requiring the appellant to amend his original bill and make him a party.

The executrix of the bankrupt was the sole original party, the relief prayed was against her alone, the integrity of the judgment was not assailed, nor the rights of the assignee therein involved, and no basis for the filing of a cross-bill was laid.

"No one need be made a party to a hearing against whom if brought to a hearing, the plaintiff can have no decree."

Mechanics' Bank of Alex. *v.* Seton, 1. Pet. 299.

"Where the case can be completely decided between the parties, the fact that an interest exists in another whom the court cannot reach by process will not prevent a decree."

Shields *v.* Barrow, 17 How. 130.

No one need be made a party complainant in whom there exists no interest, and no one party defendant from whom nothing is demanded.

Kerr *v.* Watts, 6 Wheaton, 550.

"A cross-bill is ancillary to the proceeding in the original suit and a dependency upon it."

Ayres *v.* Carver, 17 How. 591.

"Where the complainants were not defendants in the original suit brought, they cannot file a cross-bill."

Bank of Washington *v.* Arkansas, 20 Howard, 530.

"The practice of filing a cross-bill after the original suit has been heard and its merits passed on, disapproved."

Brown *v.* La Crosse & M. R.R. Co., 2 Black, 528.

"A cross-bill is for a discovery to aid a defence to the original suit or for complete relief as to all the parties as to matters charged in the original bill."

Providence Rubber Co. *v.* Goodyear, 9 Wall. 807.

"A cross-bill *ex vi terminorum* implies a bill brought by a defendant in a suit against the plaintiff in the same suit, or against other defendants in the same suit touching the matters in question in the original bill."

Story's Equity Plea, sec. 389.

9. Under the anomalous conditions of this case it was the privilege of the appellant to give notice to the intervening assignee that his claim would be confronted by the statute of limitations, a statute of repose peculiarly applicable to this case. (Act of Province of Maryland, A. D. 1715.)

The laches of the original assignee, Godet, should not

be imputed to the appellant to his injury, nor the present assignee protected therefrom.

10. The rule laid down by this court in Knox & Co. *v.* Harshman (133 U. S. 152), "that a court of equity does not interfere with judgments at law, unless the complainant has an equitable defence of which he could not avail himself at law," does not apply to this case, the appellant having clearly brought himself, as appears from the record, within the exception stated by the court.

11. In White *v.* Crow (110 U. S. 183) service of process had been regularly served upon a duly authorized agent, who had regularly assented to the rendition of the judgment complained of.

12. It is true, as held in Fowler *v.* Lee (10 Gill & Johnson, 358) that courts of chancery do not lightly interfere with judgments at law; and it is equally true that the bill of interpleader, suggested as the true remedy where the party entitled to receive the judgment is in doubt, has no applicability in this case where one of the parties claiming the judgment is pressing its collection in a State court which has no jurisdiction over an assignee in bankruptcy. The appellant brought his suit originally to prevent an unauthorized person from harassing him; he was not called upon to disclose his equities; the nature of his action did not involve them at all.

13. Appellant does not ask the court to correct the mere errors and irregularities referred to in Gregory *v.* Ford (14 Cal. 139). He does not appeal to be protected in a mere technical right, but in rights substantial and clearly displayed and well founded.

He plants himself upon the "substantial merits" required by this case.

Conclusion.

The course pursued by the appellee Wygant, executrix, as we have shown, could not create rights, and none exist, therefore, to which the appellee Leeds can be subrogated.

The said executrix did not at any time act in the interest of the bankrupt estate, but for her individual benefit, having during this litigation even industriously acquired the credits of that estate, and this, too, without any intent to subserve the interests of either the estate of her testator or the interests of the creditors of the bankrupt estate.

Finally,

shall Grace Wygant gather fruit from a judicial tree planted in fraud and nurtured by deceit?

Equity and good conscience forbid.

ROBERT CHRISTY,
Solicitor for Appellant.

110
October Term 1870.
APR 27
JAMES H. McKEE

Supreme Court of the United States.

JOSEPH M. BROWN, APPELLANT,

vs.

GRACE T. WYGANT, EXECUTRIX OF STEPHEN T. WYGANT, DECEASED, AND HENRY LEEDS, ASSIGNEE IN BANKRUPTCY OF STEPHEN T. WYGANT, APPELLEES.

BRIEF FOR HENRY LEEDS, ASSIGNEE.

A. A. BIRNEY,
Attorney for Henry Leeds, Assignee (Appellee).

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ROBERT CHRISTY,
Solicitor for Appellant.

No. 209.

October Term 1895.

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Supreme Court of the United States.

JOSEPH M. BROWN, APPELLANT,

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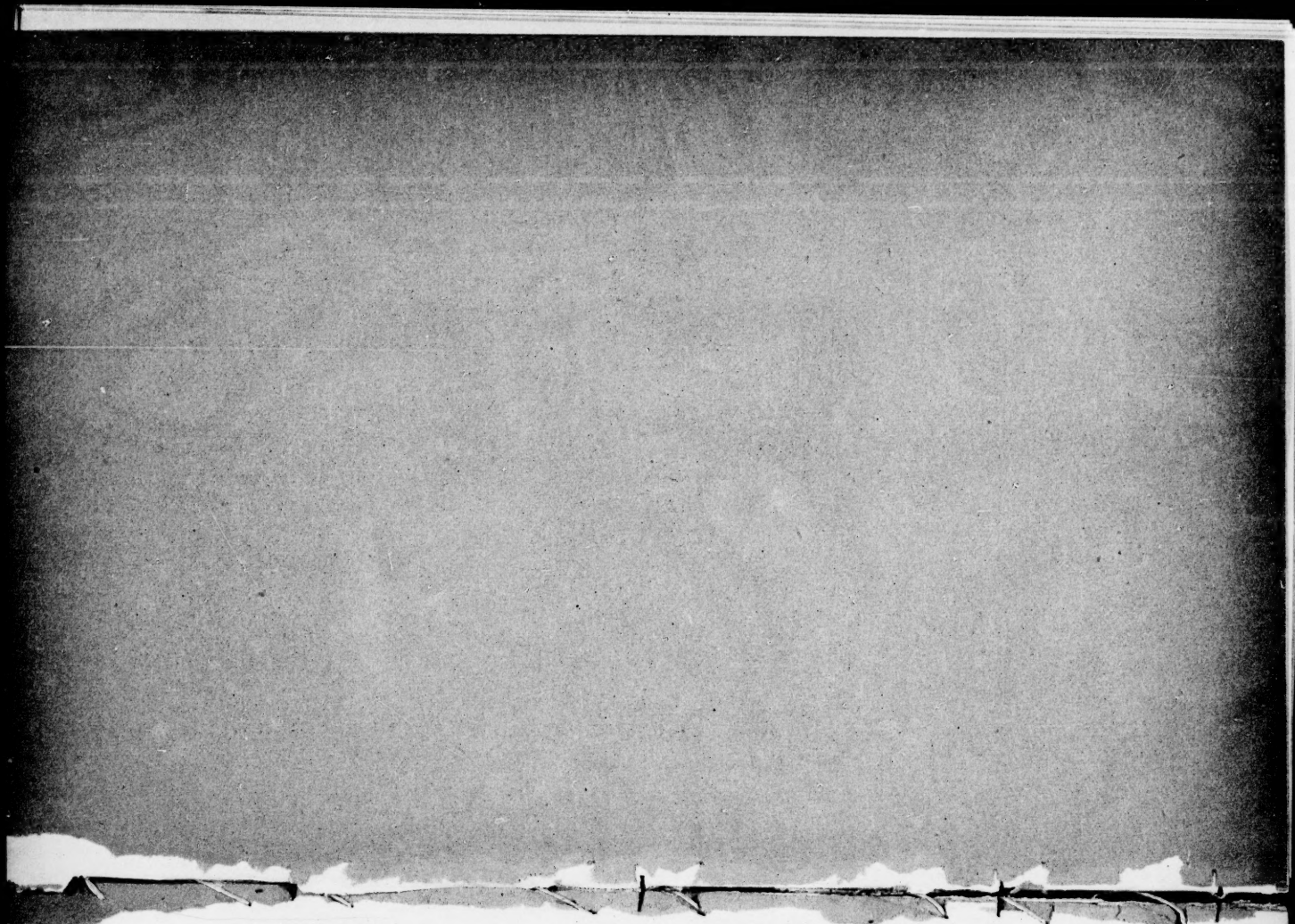

IN THE

Supreme Court of the United States.

JOSEPH M. BROWN, APPELLANT,

vs.

GRACE T. WYGANT, EXECUTRIX OF STEPHEN T. WYGANT, DECEASED, AND HENRY LEEDS, ASSIGNEE IN BANKRUPTCY OF STEPHEN T. WYGANT, APPELLEES.

BRIEF FOR HENRY LEEDS, ASSIGNEE.

STATEMENT OF FACTS.

This is a bill in equity to enjoin the collection of a judgment of "*fiat executio*" on *scire facias* and to declare it void. Briefly stated, the history of the case is as follows:

February 9, 1874, appellant Brown confessed judgment in the supreme court of the District of Columbia in favor of one Raymond for $5,000 and interest (Rec., p. 25), which judgment was on May 14, 1874, assigned to Stephen T. Wygant. Wygant was adjudicated a bankrupt by the district court for the southern district of New York in 1878, and appellee Henry Leeds is his assignee, having succeeded H. T. Godet in the office. Wygant died in 1883 testate, and letters testamentary issued to the defendant, Grace Wygant, his widow, who thereafter bought the claims of all creditors of her testator but one. In 1886 the executrix appeared in the supreme court of the District of Columbia,

suggested the death of Stephen T. Wygant, and was substituted for him as plaintiff. Two writs of *scire facias* were successively issued, and upon the second return of *nihil* a fiat was entered and the judgment revived. A year later appellant moved the court to vacate the fiat. This motion was denied. He then filed the bill in equity.

His grounds of application for injunction are:

First. That at the time of the revival of the judgment in the name of Mrs. Wygant she was without title thereto, the property therein being in Godet, the assignee.

Second. That neither of the writs of *scire facias* issued was served upon him, and that the judgment of *fiat executio* was therefore voidable at his suit. (Rec., pp. 2, 3.)

Henry Leeds, the assignee by substitution for Godet, appeared in the suit, was admitted as party defendant, and by answer and cross-bill (60, 62) ratified and confirmed, so far as he had power, the action of the executrix in her revival of said judgment, asserted that the legal effect thereof was to establish a title in said executrix for which she was accountable only to him as assignee in bankruptcy, and prayed that she might be required to assign it to him for the benefit of the bankrupt's creditors. The court in general term sustained the contentions of the assignee and entered a decree in accordance therewith (Rec., p. 71). Mrs. Wygant submitted to the decree and assigned the judgment to Leeds, assignee, as required. (Rec., p. 25.)

Argument.

There are but two questions which can arise on this appeal:

1st. Was it competent for the court to enter judgment of *fiat executio* upon the return of *nihil* to the *alias sci. fa.?*

2d. May the defendant avail himself by bill in equity of the fact that at the time of the *fiat* the assignee in bankruptcy was the real owner of the judgment and Mrs. Wygant was not such owner?

That on two returns of *nihil* to writs of *scire facias* the judgment may be revived, and that this was the established practice at common law is well settled.

Foster on *Scire Facias*, p. 355.
Cox, Com. Law Pract., 202.

This doctrine has been so recently reviewed by this Court (case 143, Oct. term, 1895) that citation of other authorities is unnecessary.

Second. But if Brown had appeared to the *scire facias* and pleaded what he now sets up as ground for injunction, such plea would have been bad on demurrer. The debtor cannot defend on the ground that the plaintiff in a pending suit has become bankrupt, and that his assignee should be the plaintiff. This Court has said:

"*It is no defense to a debt that the creditor has become a bankrupt*, and if an assignee, after notice, permits a pending suit to proceed in the name of the bankrupt for its recovery, he is bound by any judgment that may be rendered. *This is a sufficient protection to the debtor.*"

Thatcher *vs.* Rockwell, 105 U. S., 467.
Eyster *vs.* Goff, 91 U. S., 523.
s. p. Hampton *vs.* Rouse, 22 Wall., 263.

The action of Mrs. Wygant afforded ground for complaint *by the assignee only* and not by Brown. He had no standing to object. The *sci. fa.* was only a continuation of the action and not an original proceeding.

Third. But even though the judgment were irregular, it would not be enjoined by a court of equity, for Brown does

not pretend to a meritorious defense and shows nothing to render it against conscience that the judgment should be enforced. What he does seek is to dispossess Mrs. Wygant of title and place himself in a position where if *sci. fa.* be taken out by the assignee he may successfully plead limitations.

In case of a judgment it must be shown to be against equity and good conscience to allow it to be extended. *In addition to this,* the aggrieved party must show either that he could not have availed himself of the facts which make it *unjust* in a court of law, or that he was prevented from so doing by fraud, accident, surprise, or mistake.

2 Story, Eq. Juris, sec. 887.
See note to Davis *vs.* Tileston, 6 How., 114 (Law ed.).
Crim *vs.* Handley, 94 U. S., at 658.
Embry *vs.* Palmer, 107 U. S., 3.
Marine Ins. Co. *vs.* Hodgson, 7 Cranch, 332.
Little *vs.* Price, 1 Md. Ch., 182.
Ableman *vs.* Roth, 12 Wis., 81.
Sutherland *vs.* Davis, 46 Ind., 26.
Knox Co. *vs.* Harshman, 133 U. S., 152.

False return of service of process no ground for relief by injunction, where merits are not shown.

Walker *vs.* Robbins, 14 Howard, 584.

A bill to enjoin a judgment is watched with extreme jealousy.

Bateman *vs.* Wilson, 1 Sch. & Lef., 201.
Slack *vs.* Wood, 9 Grattan, 40.

It must appear—

1. That to allow the judgment to be executed would be contrary to equity and good conscience; and
2. That the facts which render it thus inequitable were

not available as a defense in the action in which the judgment was had.

Clute *vs.* Potter, 37 Barb., 199.
2 Story, sec. 688.
Williard's Eq., 356.
High on Injunctions, sec. 126.

Equity relieves from a judgment in the interest of justice only when there is a substantial merit.

White *vs.* Crow, 110 U. S., 183; 14 Cal., 138.
Fowler *vs.* Lee, 10 Gill & J., 358.

In California, in a suit to set aside judgment for fraudulent collusion between attorneys, it was held that the merits of the action would be considered.

41 Calif., 247.

In Wisconsin—

"We know of no case where a judgment regularly obtained will be set aside without merits being shown. * * * Equity interferes only to prevent injustice."
Ableman *vs.* Roth, 12 Wis., at 99.

Equity will not interfere on the ground only that no process was served.

2 Story Eq. Jur., sec. 898; 8 Ala., 500.

In this case no *wrong* has been done Mr. Brown. He has lost nothing, paid nothing, and should he pay this judgment he would pay only that which in equity and good conscience he should pay.

A. A. BIRNEY,
Attorney for Henry Leeds, Assignee (Appellee).

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 422.

THE UNITED STATES OF AMERICA AND CLIFFORD B. ACKERLY, EXECUTOR OF WILLIAM W. MERRIAM, DECEASED, PLAINTIFFS IN ERROR,

vs.

J. HENRY PERKINS, COUNTY TREASURER OF SUFFOLK COUNTY, NEW YORK.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

FILED JULY 23, 1894.

(15647.)